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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 63

A. P. DICKSON, JOE DICKSON, I. N. CALVERT, ET AL., PETITIONERS,

vs.

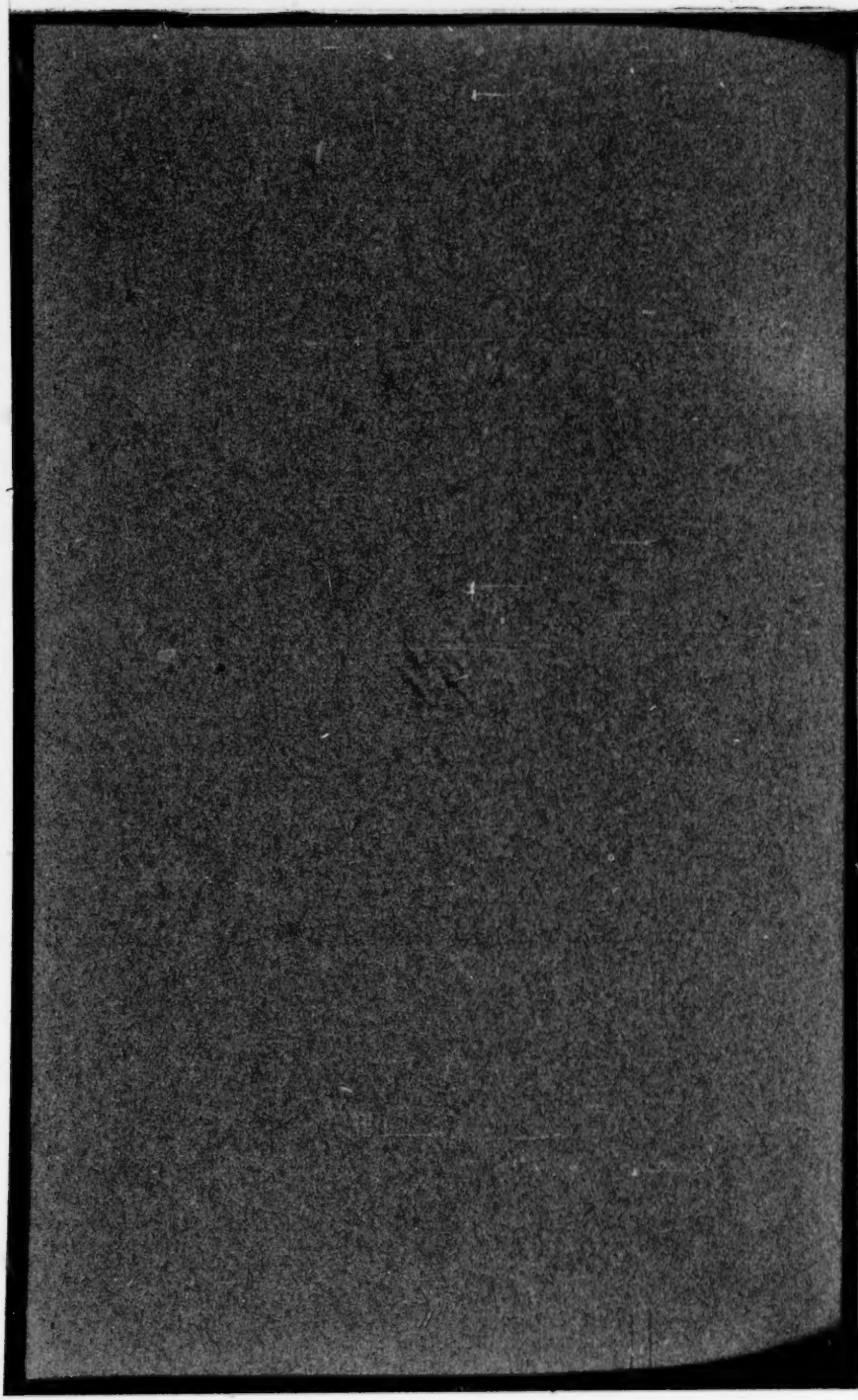
UHLMANN GRAIN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 9, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,744)



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INDEX

	Original	Print
Proceedings in United States circuit court of appeals, eighth circuit	*a*	1
Caption (omitted in printing)	*a*	
Record from district court of the United States, Western Missouri	1	1
Citation and admission of service (omitted in printing)	1	
Record entry of filing of petition	2	1
Petition	2	1
Exhibit A—Statement, Uhlmann Grain Company to A. P. Dickson, December 2, 1904	4	2
Demurrer and answer of defendant	4	3
Stipulation for continuance	7	6
Stipulation for continuance	7	6
Stipulation waiving jury	7	7
Order consolidating cases Nos. 6044, 6045, 6062, 6200, and 6201	8	7

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1932

	Original	Print
Minute entry of trial, May 21, 1928	8	7
First amended answer	8	8
Reply to first amended answer	11	11
Trial, May 22, 1928	12	12
Trial, May 23, 1928	12	12
Judgment	12	12
Motion for new trial	19	19
Petition for appeal and allowance thereof	20	20
Assignment of errors	20	21
Order fixing amount of bond on appeal	21	22
Bond on appeal (omitted in printing)	21	
Order, December 7, 1929, extending time to file transcript	23	22
Election as to printing of record	23	23
Order, January 7, 1930, further extending time to file transcript	24	23
Order, February 7, 1930, further extending time to file transcript	24	24
Order, March 6, 1930, further extending time to file transcript	25	24
Order, April 4, 1930, further extending time to file transcript	25	24
Order overruling motion for new trial	25	25
Order, April 24, 1930, extending time to file bill of exceptions	26	25
Order, May 7, 1930, further extending time to file transcript	26	26
Order, June 6, 1930, further extending time to file transcript	26	26
Order, July 7, 1930, further extending time to file transcript	27	27
Order, September 6, 1930, further extending time to file trancript	27	27
Order, November 1, 1930, further extending time to file bill of exceptions	28	27
Order, November 6, 1930, further extending time to file transcript	28	28
Bill of exceptions	28	29
Caption	29	29
Testimony for plaintiff	29	30
Testimony of O. W. Rowe	29	30
Plaintiff's exhibits	31	31
1—Telegram	31	31
2—Confirmation of trade for account of S. P. Dickson	32	33
3—Statement of account between Uhlmann Grain Company and A. P. Dickson	35	34
4—Statement of account between Uhlmann Grain Company and Joe Dickson	39	36

	Original	Print
5—Statement of account between Uhlmann Grain Company and I. N. Calvert	41	37
6—Statement of account between Uhlmann Grain Company and Ernest Miller	45	39
7—Statement of account between Uhlmann Grain Company and C. R. Dickinson	47	40
8—Account of purchase and sale by Uhlmann Grain Company for A. P. Dickson	55	45
8-A—Confirmation of purchase by Uhlmann Grain Company for A. P. Dickson, March 31, 1924	55	45
8-B—Confirmation of sale by Uhlmann Grain Company for A. P. Dickson, March 28, 1924	56	46
9—Reproduction of operator's receipt of message	61	50
10—Promissory note, C. L. Dickinson to Uhlmann Grain Company, $4,000.00, October 8, 1924	65	51
11—Promissory note, W. L. Dickinson et al. to Uhlmann Grain Company, $3,000.00, October 8, 1924	65	51
12—Promissory note of C. R. Dickinson et al. $1,000.00, October 8, 1924	65	51
13—Promissory note, Ernest Miller to Uhlmann Grain Company, $4,000.00, October 8, 1924	65	54
Testimony of Richard Uhlmann	73	60
Plaintiff's exhibits	76	63
14—Confirmation of purchase of November 15, 1924	76	63
15—Memorandum as to	76	63
16—Telegram dated August 19, 1924	76	63
17—Confirmation of purchase, May 17, 1928	77	64
18, 19 and 20—Rules and by-laws of Chicago, Minneapolis & Winnipeg Grain Exchanges in force in 1924	78	65
21—Confirmation by R. B. McClean Grain Company, Limited, August 27, 1924	83	71
22—Confirmation by Sea Board Grain Company, Limited, August 21, 1924	85	72
23—Confirmation by Brown Grain Company	87	73
24—Confirmation by Cargill Commission Company, August 21, 1924	89	74

	Original	Print
25—Report of Uhlmann Grain Company made to United States Department of Agriculture for December 1, 1924..	93	77
26—Report of Uhlmann Grain Company made to United States Department of Agriculture for March 31, 1927....	95	78
27—Telegram to R. F. Uhlmann, May 21, 1928	97	79
Rule 4, section 33, of rules of Board of Trade of Chicago	97	79
28—Record of transactions	98	81
Testimony of W. F. Logan	106	89
Plaintiff's exhibits	107	90
30—General regulations promulgated by Secretary of Agriculture with respect to contract markets in force in 1924	107	90
31—Report of Grain Futures Administration for 1924.....	110	93
Testimony of E. S. McDonough.....	111	95
Benjamin L. Hargis	122	107
Richard Uhlmann	132	119
O. W. Rowe	135	122
Motion of each Defendant for declaration of law and denial thereof	136	124
Testimony for Defendants	136	124
Testimony of Paul Uhlmann.....	137	124
Defendants' exhibits.....	139	127
1—Notice of purchase of wheat.....	139	127
2—Notice of sale of wheat.....	139	127
Section 8 of rules and by-laws of Chicago Board of Trade.....	150	139
D—List of Customers at Carrollton....	152	141
A—Letter, Uhlmann Grain Company to R. A. Thomson, November 12, 1924	153	142
C—Letter, Uhlmann Grain Company to I. N. Calvert, November 13, 1924	153	142
Testimony of T. H. Cramer	154	143
Amos Dickson.....	157	147
I. N. Calvert.....	167	158
C. T. Dickinson.....	168	159
O. W. Rowe.....	170	162
Defendants' exhibits	173	164
F—Accounting of purchase and sale of 10 Chicago December wheat.....	173	164
G—Memorandum as to final account rendered to I. N. Calvert.....	173	165
E—Memorandum of account of purchase and sale of Uhlmann Grain Company for Ernest Miller.....	175	166

	Original	Print
Motion of defendants for judgment and denial thereof	183	169
Findings of fact requested by Plaintiff and refusal thereof	183	169
Findings of fact	187	173
Approval of bill of exceptions by counsel	189	176
Approval of bill of exceptions by district judge	189	176
Præcipe for transcript	190	177
Order, January 6, 1931, further extending time to file transcript	192	178
Opinion, Reeves, J.	192	179
Clerk's certificate [omitted in printing]	197	
Appearances of counsel [omitted in printing]	198	
Argument and submission [omitted in printing]	199	
Opinion, Gardner, J.	200	185
Concurring opinion, Van Valkenburgh, J.	212	198
Dissenting opinion, Kenyon, J.	217	203
Judgment	219	204
Petition for rehearing	220	205
Order denying rehearing	223	207
Motion for stay of mandate	223	208
Order staying mandate	224	208
Clerk's certificate (omitted in printing)	225	
Order allowing certiorari	226	208

[fol. a] [Caption omitted]

[fol. 1] Citation, in usual form, showing service on S. J. Jones et al., filed November 8, 1929, omitted in printing.

[fol. 2]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI

6044

UHLMANN GRAIN COMPANY, a Corporation, Plaintiff,

vs.

A. P. DICKSON, Defendant

RECORD ENTRY—Dec. 12, 1924

This day comes plaintiff by its attorneys and files Petition herein.

IN UNITED STATES DISTRICT COURT

PETITION ON ACCOUNT—Filed Dec. 12, 1924

Comes now the plaintiff and states that at all times hereinafter mentioned it was and is a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business in Chicago, Cook County, Illinois, and was and is a citizen and resident of said Chicago, Cook County, Illinois; that at all [fol. 3] such times the defendant was and is a citizen and resident of the City of Carrollton, in the Western Division of the Western District of Missouri.

That this is a suit of a civil nature wherein the plaintiff is attempting to recover from the defendant the sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars as a balance due on account by the defendant to this plaintiff; that the amount in controversy exclusive of interests and costs is more than Three Thousand Dollars; and that this is

a controversy wholly between citizens of different states between whom a several judgment can be had.

For its cause of action against the defendant the plaintiff says that at all times hereinafter mentioned plaintiff was and is engaged in the grain business acting as a grain broker with a place of business in Kansas City, Jackson County, Missouri; that on various dates between April 1, 1924, and November 13, 1924, the defendant employed the plaintiff to purchase and sell wheat and other grains for him on the Chicago and Winnipeg markets, the defendant agreeing to pay the plaintiff a commission on purchases and sales; that pursuant to said employment the plaintiff purchased and sold grain for the defendant as aforesaid, the plaintiff sometimes advancing all or part of the purchase price, for which services and for which advancements the defendant agreed to pay. That during said time an account arose between plaintiff and defendant of mutual credits and debits in the purchase and sale of the grain by plaintiff for the defendants; that the items of said account are hereto attached, marked Exhibit A and made a part of this petition.

That there is now due and owing the plaintiff from the defendant on said account and on account of said services rendered and moneys advanced the sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars; that plaintiff has duly demanded of defendant the payment of said balance which defendant has always failed and refused to do.

Wherefore, plaintiff prays judgment against the defendant in the full and just sum of Thirty-seven Hundred Fourteen & 06/100 ($3,714.06) Dollars together with the costs and disbursements of this action.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff.

[fol. 4] EXHIBIT A TO PETITION

Statement

Kansas City, Mo., Dec. 2, 1924.

A. P. Dickson, c/o Dickson Bros.,

Carrollton, Mo., to Uhlmann Grain Co., Grain Merchants, Dr.

1924.				1924.			
Apr.	1.	Ck. Bal.....	34.39	Mar.	31.	P. & S. 2529....	16.65
May	28.	Ck. on acct.....	200.00		"	" 2530....	17.74
June	5.	P. & S. 3248....	71.89	May	5.	Ck. Margin....	150.00
	25.	" 3529....	1,291.94		21.	" "	200.00
	27.	Ck. on acct.....	800.00	June	5.	P. & S. 3249....	378.87
	26.	P. & S. 3549....	63.68		25.	" 3530....	1,656.79
July	29.	" 4131....	425.63		26.	" 3550....	183.92
Aug.	18.	" 4412....	451.28	July	29.	" 4132....	680.73
	20.	" 4440....	345.21		31.	Ck. Margin....	200.00
	21.	" 4498....	1,213.67	Aug.	2.	P. & S. 4216....	24.33
	25.	" 4591....	601.28		"	" 4217....	43.05
	26.	" 4613....	181.90		18.	" 4411....	523.63
	27.	Ck. on acct.....	850.00		20.	" 4439....	535.44
	"	P. & S. 4654....	764.28		21.	" 4499....	1,098.65
	"	" 4674....	6.25		25.	" 4590....	909.62
	30.	" 4766....	88.79		26.	" 4612....	224.15
Sept.	2.	" 4831....	457.62		27.	" 4653....	984.88
	"	" 4832....	176.89		30.	" 4767....	211.14
	15.	" 5057....	63.64	Sept.	2.	" 4833....	123.70
Oct.	18.	" 5466....	14,803.00		"	" 4834....	784.82
Nov.	3.	" 5687....	242.98		15.	" 5058....	43.18
	8.	" 5771....	100.60		24.	Ck. Margin....	300.00
	13.	" 5869....	1,401.20		29.	" "	500.00
			24,636.12	Nov.	3.	P. & S. 5685....	3,388.31
					"	" 5686....	872.09
					8.	" 5772....	2,204.74
					13.	" 5870....	4,665.63
							20,922.06
						Balance...	3,714.05*
			24,636.12				24,636.12
		Balance....	3,714.06				

* [*Red in copy.*]

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S ANSWER AND DEMURRER—Filed April 27, 1925

Demurrer

Comes now the defendant in the above entitled cause and demurs to plaintiff's petition herein and as grounds of demurrer says:

[fol. 5] First. Said petition does not state facts sufficient to constitute a cause of action against this defendant.

Second. Said petition is indefinite, vague and uncertain, and does not sufficiently inform and advise plaintiff of the cause of action sued on in this case.

Third. The account attached to plaintiff's petition, marked "Exhibit A" and referred to in said petition as an exhibit and as constituting a part of the petition, is not a sufficiently itemized account, is vague, indefinite and uncertain and does not inform and advise defendant of the nature and character of the items of said account, out of what transaction they arose, whether the several amounts claimed are for money advanced to defendant, for merchandise or other commodities.

Answer

Comes now the defendant in the above entitled cause, by his attorneys, and for his answer to plaintiff's petition herein says that he denies that he is indebted to plaintiff in any sum or amount whatever.

Defendant further states that at all of the times mentioned in plaintiff's petition herein and in the account attached to plaintiff's petition, marked and referred to as "Exhibit A", the plaintiff claimed and pretended to be engaged in the business of dealing in grain and grain futures for itself and as a broker on commission for others on the board of trade in Chicago, Illinois, and Winnipeg, Canada, and speculated and gambled on the rise and fall of the market price of said grain on said boards of trade and throughout the country generally; that said account of the amount claimed in plaintiff's petition against defendant was and is made up of items and amounts which plaintiff claims was due it from defendant as commissions and for money advanced by plaintiff for defendant in making transactions in which plaintiff for itself and as agent for defendant pretended to buy and sell, and went through the form of buying and selling, grain, to-wit wheat, to defendant and for defendant, and for other persons whose names are unknown to defendant at prices fixed and pretended to be fixed by trades and transactions made and offered to be made in said grain on said boards of trade, but in which said transactions there was in fact no actual purchase and no sale or sales of said grain for or on account of defendant or

the persons which plaintiff pretended said persons were dealing with, or for plaintiff itself, and for purchases and sales and pretended purchases and sales and contracts and [fol. 6] agreements for the purchase and sale of said grain on margin and futures, options, puts, calls, spreads and offers without any intention on the part of defendants at the time of said purchases and sales and pretended purchases and sales and the making of said contracts and agreements for the purchases and sales of said grains on margins, futures, puts, calls, spreads and offers of receiving and paying for property so bought or of delivery of property so sold, all of which plaintiff at the time well and truly knew, and all the buying and pretended buying and selling of such grain on margins and optional delivery by plaintiff for itself and for defendant were made by plaintiff when plaintiff knew and the fact was that at the time of such selling and offering to sell by defendants, defendants did not intend to have the full amount of said grain on hand or under their control to deliver upon such sales or pretended sales, and did not intend when buying such grain and offering to buy the same to actually receive the full amount of grain so purchased and pretended to be purchased, and the fact was which plaintiff well and truly knew that defendant was merely gambling on the rise and fall of the market prices of said grain on margins, which enabled them to gamble as aforesaid without expectation and intention of ever receiving or delivering any of such grain or paying for same, but merely to settle the difference by the market price thereof, and by such market prices to determine their losses and profits in such gambling transactions; that for the reasons above stated said claim or account which is sued on in this case is illegal, invalid and in violation of the laws of the state of Missouri.

Further answering, defendant says that plaintiff at said times pretended to be dealing in what is claimed and represented was a spread between the grain markets on the board of trade at Chicago, Illinois, and Winnipeg, in the Dominion of Canada, whereby plaintiff gambled and speculated on the future rise and fall of the grain markets between the said City of Chicago and City of Winnipeg. That is to say that plaintiff sold grain for future delivery on the prices at both markets, and the differences in the price at

the two markets would represent what plaintiff termed and denominated a "spread": that said grain so bought and sold on either of said markets was not bought or sold for actual delivery, and delivery was never intended by either plaintiff or defendant, which fact was well known to plaintiff at the time; that the purchase or sale of grain for future delivery on either or both markets was a mere gambling [fol. 7] transaction, a dealing in futures, margins and options, all of which was well known to plaintiff, and that the same were illegal and void.

Further answering defendant denies each and every allegation in plaintiff's petition contained.

Wherefore, having fully answered, defendant prays to be discharged with his costs.

S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

Stipulation for Continuance—Filed November 25, 1925

It is hereby stipulated and agreed that the above entitled cause shall be continued to the next term of this court.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

Stipulation for Continuance—Filed April 29, 1926

It is hereby stipulated and agreed that the above entitled cause shall be continued to the next term of this court.

Ryland, Boys, Stinson & Mag, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY, ETC.—Filed March 27, 1928

Counsel for plaintiff and for defendant in each of the above entitled causes waive trial by jury and consent that the causes may all be consolidated and tried to the court without the intervention of the jury.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff. S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING CASES NO. 6044, 6045, 6062, 6200, and 6201—Filed March 27, 1928

The written consent of counsel for both parties in each of the above captioned causes having heretofore been filed, consenting to the trial of these causes without a jury and to their consolidation,

It is By The Court Ordered And Adjudged: That these causes be and the same hereby are consolidated for trial, a trial of the issues before a jury is dispensed with and the causes will be tried before the court.

Dated this 27th day of March, 1928.

Albert L. Reeves, Judge.

[File endorsement omitted.]

(The cases referred to in the foregoing Stipulation and Order are No. 6044 Uhlmann Grain Co. vs. A. P. Dickson, No. 645 Uhlmann Grain Co. vs. Joe Dickson, No. 6062 Uhlmann Grain Co. vs. I. N. Calvert, No. 6200 Uhlmann Grain Co. vs. C. T. Dickinson, and No. 6201 Uhlmann Grain Co. vs. Ernest Miller.)

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 21, 1928

These consolidated causes coming on regularly for hearing, the parties appearing by their attorneys; defendants are each granted leave to file first amended answer; plain-

tiff refiles replies to answer in each case, and announce ready for trial and waiving trial by jury; thereupon opening statements are made and the matters in issue are submitted to the court for trial, and testimony is introduced on behalf of the plaintiff, and not being concluded at hour of adjournment the hearing is continued until tomorrow morning.

In United States District Court

First Amended Answer—Filed May 21, 1928

Comes now the defendant in the above entitled cause and for his first amended answer, leave of court first had and obtained, denies that he is indebted to plaintiff in any sum or amount on account of the pretended account filed with the petition herein or any pretended item thereof.

Further answering defendant says that all of the times mentioned in plaintiff's petition herein that plaintiff kept and maintained in the basement of the Florence Hotel [fol. 9] situated at the Northwest corner of the public square in the town of Carrollton, Carroll County, Missouri, a place wherein plaintiff as principal and agent or agent and principal pretended to buy and sell or went through the form of buying and selling for defendant and various other persons grain consisting of wheat, corn, oats and other commodities at prices fixed or pretended to be fixed by trades or transactions made or offered to be made on such grain on various boards of trade, namely; On the boards of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Monnesota and Winnipeg [of] Canada, but wherein there was in fact no actual purchase and sale or sale and purchase of said grains for or on account of the party or parties thereto, but defendant avers the fact to be that the claim which plaintiff sues defendant for in this cause, if contracted, was illegally contracted at said place so kept, mantained and operated by the plaintiff, and that in none of the transactions or trades, if any which occurred between plaintiff and defendant there was in fact no actual purchase and sale or sale and purchase of grains or other commodities; that all such transactions were wholly fictitious and the buying and selling of such grain was a mere form and pretense.

Further answering defendant states that at all of the times mentioned in plaintiff's petition herein and in the account attached to plaintiff's petition, marked and referred to as "Exhibit A", the plaintiff claimed and pretended to be engaged in the business of dealing in grain and grain futures for itself and as a broker on commission for others on the boards of trade of Chicago, Illinois and Winnipeg, Canada and speculated and gambled on the rise and fall of the market prices of said grain on said boards of trade and throughout the country generally; that said account of the amount claimed in plaintiff's petition against the defendant was and is made up of items and amounts which plaintiff claims was due it from defendant as commission and for money advanced by plaintiff for defendant in making transactions in which plaintiff itself as agent for defendant pretended to buy and sell and went through the form of buying and selling grain, to-wit, wheat, to defendant, and for other persons whose names are unknown to defendant at prices fixed and pretended to be fixed by trades and transactions made and offered to be made in said grain on said boards of trade, but in which said transactions there was in fact no actual purchase and no sale or sales of said grain for or on account of defendant; or the persons which plaintiff pretended said persons were dealing with, or for plaintiff itself, and for [fol. 10] purchases and sale and pretended purchases and sales and contracts and agreements for the purchase and sale of said grains on margin and futures, options, puts, calls, spreads and offers without any intention on the part of the defendants at the time of said purchase and sale and pretended purchases and sale and the making of said contract and agreements for the purchase and sale of said grain on margins, futures, puts, calls, spreads and offers of receiving and paying for property so bought or of delivery of property to be sold, all of which plaintiff at the time well and truly knew, and all of the buying and pretended buying and selling of such grain on margins and optional delivery by plaintiff for itself and for defendant were made by plaintiff when plaintiff well knew and the fact was that at the time of such selling and offering to sell by defendants, defendants did not intend to have the full amounts of said grain on hand or under their control to deliver upon such sales or pretended sales, and did not

intend when buying such grain and offering to buy the same to actually receive the full amount of grain so purchased and pretended to be purchased, and the fact was, which plaintiff well and truly knew, that defendant was merely gambling on the rise and fall of the market prices of said grain or margins, which enabled them to gamble as aforesaid without expectation and intention of ever receiving or delivering any of such grains or paying for the same, but merely to settle the difference by the market price thereof, and by such market prices to determine their losses and profits in such gambling transactions; that for the reasons above stated said claim or account which is sued on in this case is illegal, invalid and in violation of the laws of the State of Missouri.

Further answering, defendant says that plaintiff at said times pretended to be dealing in what is claimed and represented was a spread between the grain markets of the board of trade at Chicago, Illinois, and Winnipeg in the Dominion of Canada, whereby plaintiff gambled and speculated on the future rise and fall of the grain markets between the said city of Chicago and the city of Winnipeg. That is to say that plaintiff sold grain for future delivery on the prices of both markets, and the difference in the price at the two markets would represent what plaintiff termed and denominated a "spread"; that said grain so bought and sold on either of said markets was not bought or sold for actual delivery, and delivery was never intended by either plaintiff or defendant, which fact was well known to plaintiff at the time; that the purchase or sale of grain for future delivery on either or both mar-
[fol. 11] kets was a mere gambling transaction, a dealing in futures, margins and options, all of which was well known to plaintiff, and that the same was illegal and void.

Wherefore, having fully answered, defendant prays to be discharged with his costs.

Lathrop, Crane, Sawyer & Mersereau, S. J. & G. C. Jones, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

REPLY OF PLAINTIFF TO DEFENDANT'S FIRST AMENDED ANSWER—Filed May 17, 1928; refiled May 21, 1928

Comes now the plaintiff and for reply to defendant's first amended Answer denies each and every allegation in said first amended answer contained.

Further replying plaintiff states that the obligations herein sued on grew out of and were incurred by defendant and in favor of plaintiff on account of advances by and commissions earned by plaintiff in behalf and for the account of the defendant in transactions in grain involving the purchase and sale thereof for future delivery as commonly conducted on boards of trade by the public generally and known as "futures"; that such transactions were executed and carried out on boards of trade in Chicago, Illinois and Minneapolis, Minnesota in pursuance of and in compliance with the Federal Grain Futures Act by and through the plaintiff who at all such times was a member of such boards of trade and of the Kansas City Board of Trade, each of which boards had been designated by the Secretary of Agriculture as a "contract market". Each of which transactions of purchase or sale being made by the plaintiff in behalf of defendant with another member of such board of trade, and each of which transactions were evidenced by a record in writing showing the date, the parties to such contract, their addresses, the property covered and its price and terms of delivery; that each of said transactions of purchase and sale was executed under the supervision of and with the knowledge and consent of the Grain Futures Administration of the Department of Agriculture in pursuance of the terms of said Grain Futures Act and was and is a transaction in futures which was used by others as a basis for determining the price basis of other transactions in grain in Interstate Commerce and for delivering grain [fol. 12] sold, shipped and/or received in Interstate Commerce for the fulfillment thereof; that the prices involved in each of such transactions were generally quoted and disseminated throughout the United States and in foreign countries as a basis of determining prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movement thereof in Interstate

Commerce; and that such transactions or many of them were utilized by shippers, dealers and others engaged in handling grain and the products and by-products thereof in Interstate Commerce as a means of hedging themselves against possible loss.

Wherefore plaintiff prays judgment against the defendant in accordance with the prayer of its petition.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 22, 1928

Comes now again the above named parties by counsel and the hearing of this cause is resumed and further testimony is introduced on behalf of plaintiff, and plaintiff rests; at the close of plaintiff's evidence the defendants and each of them ask for declaration of law that under the facts and evidence the plaintiff cannot recover, which said request is denied by the court. Testimony is introduced on behalf of defendants, and not being concluded at the hour for adjournment the hearing is continued until tomorrow morning.

IN UNITED STATES DISTRICT COURT

TRIAL, MAY 23, 1928

Come now again the parties by their respective counsel and the hearing of this cause is resumed and further testimony is introduced on behalf of the defendants, and defendants rest; plaintiff is permitted to amend each petition for allowance of interest. Defendants ask for peremptory instructions; case taken under advisement on briefs to be lodged with the court.

IN UNITED STATES DISTRICT COURT

JUDGMENT—March 8, 1929

In each of the cases above styled the plaintiff requested the Court in writing to make the following findings of fact:

[fol. 13] 1. In all the transactions involved in these suits the plaintiff acted as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff enter into any other than a brokerage contract with any defendant.

2. Every purchase and sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits was executed in Missouri.

3. Every transaction was a contract of purchase or sale of grain for future delivery, executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the other party to the transaction, either acting for himself or an undisclosed principal, was also a clearing member.

4. Every contract of purchase or sale executed by plaintiff for defendants was carried out in conformity and in compliance with the rules of the particular grain exchange on which it was closed.

5. Every contract executed by plaintiff on behalf of defendants actually called for the purchase or sale of grain for future delivery, and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, offsetting or ringing purchases or sales were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purchase or sale, was offset by a sale or purchase executed in the same manner as the initiating purchase or sale. Every purchase or sale was closed out by an offsetting transaction before the delivery time arrived and was executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the contracts of purchase and sale were executed, and plaintiff constantly [fol. 14] maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its contracts. All transactions of purchase and sale executed by plaintiff for defendants were contracted for on the Exchanges in the name of plaintiff, plaintiff was responsible for their performance, and in each instance where the sale price was for an amount less than the purchase price, plaintiff acting as defendants' broker paid the difference to the Clearing House of the Exchange upon which the transactions were carried out. In none of the transactions did plaintiff profit or lose by a loss or profit to defendants. In all of them it acted only as broker for defendants.

8. None of the purchases or sales were executed at Carrollton, Missouri. Orders were given by defendants from time to time at Carrollton to plaintiff's local office for execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were carried out by plaintiff by telegraphic instructions emanating from Kansas City and by written confirmation of the execution of the order, which written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all "P & S's", all confirmations of the execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely received and transmitted orders of its customers to Kansas City for execution on the Grain Exchanges designated in the customer's order.

10. None of the transactions of purchase and sale executed by plaintiff for defendants was a fictitious transaction. All of them were actually executed between clearing members of the Exchange where consummated, one of whom would be plaintiff acting for defendant.

11. In none of the transactions did plaintiff bet with its customers or take the other side of the deal.

12. In no transactions did plaintiff and defendant settle the gain or loss of defendant other than by ascertaining the actual differences between the price at which the commodity was bought and that at which it was sold. In no transaction of purchase or sale did plaintiff and defendant fix a fictitious [fol. 15] profit or loss to defendant by an ascertainment of the difference between the contract price and the market price on the day fixed for delivery.

13. In each transaction, after an order to sell or purchase was executed by plaintiff, in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant.

Every written confirmation recited that—

"All transactions made by us for your account contemplates the actual receipt and delivery of the property and payment therefor."

There was no evidence that plaintiff's local agent at Carrollton had any authority to make a different agreement or contract with the defendants other than the apparent authority that may have been conferred upon him by the establishment by plaintiff of the Carrollton office and the putting of its representative in charge thereof.

14. At all the times in question the Chicago and Minneapolis Boards of Trade had been designated by the Secretary of Agriculture of the United States as Contract Markets. At all such times the written records and written reports required by the Grain Futures Act and the rules and regulations of the Department of Agriculture were made by the plaintiff and the other clearing member to the transaction, and the contracts of purchase and/or sale were executed with the formalities required by the Grain Futures Act and the Grain Futures Administration of the Department of Agriculture.

15. In every contract entered into by plaintiff in behalf of defendants, plaintiff was legally obligated to perform the written terms thereof, and every such contract was actually executed and was evidenced by a written memorandum entered into between the clearing members of the Exchange in whose name the contracts were executed. Under the rules of all of the Exchanges on which the con-

tracts of purchase and sale were executed, the agreements were required to be made in the names of clearing members who were held responsible for their performance. None of the contracts of purchase and/or sale under the rules of these Exchanges could have been entered into in the names of defendants. In each of such transactions however the defendants were the undisclosed principal of plaintiff acting for them.

[fol. 16] 16. If defendants had no intention of accepting or making delivery of the grain called for by the contracts in question, plaintiff had no knowledge of such fact and did not participate in the intention.

17. There was no evidence that the other party to the contracts entered into between plaintiff acting for defendants and such other party, either intended not to take or make delivery, or intended to perform the contract by a mere settlement of the difference between contract and market prices on the date fixed for delivery; or that such other parties to the transactions of purchase and sale intended mere fictitious or pretended transactions.

Each of which requests for findings the Court refused to give, to which action of the Court in the refusing of each of said requested findings of fact, the plaintiff separately and severally at the time excepted.

And now the Court of its own motion makes the following findings of fact in each of the above styled cases:

1. In all of the transactions involved in these suits the plaintiff purported to act as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff pretend to enter into any other than a brokerage contract with any defendant.

2. Every pretended purchase and pretended sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits purported to have been executed in Missouri.

3. Every transaction was a pretended contract of purchase or sale of grain for future delivery, purported to

have been executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the purported other party to the transaction, either acting for himself or a pretended undisclosed principal, was also a clearing member.

4. Every pretended contract of purchase or sale executed by plaintiff for defendants was purported to have been carried out in conformity and in compliance with the rules of the particular grain exchange on which it was pretended to have been closed.

5. Every contract purported to have been executed by plaintiff on behalf of defendants pretended to call for the [fol. 17] purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated in form and pretense to take or make delivery, or to respond in damages for failure to do so. That under the customs and practice existing and under the rules of the exchanges, off-setting or ringing purchases or sales under proper circumstances, in good faith, were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purported purchase or sale, was offset by a pretended sale or pretended purchase executed in the same manner as the initiating purported purchase or sale. Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the pretended contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its bona fide contracts. All transactions of pre-

tended purchase and pretended sale executed by plaintiff for defendants were purported to have been contracted for on the Exchanges in the name of plaintiff.

8. None of the pretended purchases or sales were purported to have been executed at Carrollton, Missouri. Orders were pretended to have been given by defendants from time to time at Carrollton to plaintiff's local office for purported execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were purported to have been accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were purported to have been carried out by plaintiff by telegraphic instructions emanating from Kansas City and by pretended written confirmation of the execution of the order, which pretended written confirmations would be mailed from Kansas City to the customer.

[fol. 18] 9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all pretended "P & S's", all pretended confirmations of the purported execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely pretended to receive and transmit purported orders of its customers to Kansas City for pretended execution on the Grain Exchanges designated in the customer's pretended order.

10. All of the transactions of purchase and sale executed by plaintiff for defendants were fictitious transactions. None of them were actually executed between clearing members of the Exchange where pretended to have been consummated.

11. In all of the transactions plaintiff bet with its customers and took the other side of the deal.

12. In each transaction, after a pretended order to sell or purchase was purported to have been executed by plaintiff in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant. Every written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

To which action of the Court in making each of the findings of fact so found, plaintiff (and also defendants) as to each separate finding and in each separate case, excepted at the time and still except.

Wherefore, these cases having been submitted to the Court upon the pleadings and the evidence, and upon the requests for findings of fact by the plaintiff, and the Court having duly considered the evidence, the briefs and the arguments of counsel for the respective parties, and being fully advised in the premises does find, that the parties hereto by stipulation in writing herein filed in form and manner as provided by statute, have waived a trial by jury and have agreed that these cases may be consolidated together and that the issues therein might be heard and determined by the Court without the aid of a jury.

The Court finds the issues in each of the cases above enumerated in favor of the defendants and finds that the plaintiff is not entitled to recover in any of these actions.

[fol. 19] Wherefore it is Considered, Ordered and Adjudged that plaintiff take nothing by its suit as to each and any of said cases and that defendant in each of said causes so consolidated, have and recover of plaintiff his costs herein expended.

Albert L. Reeves, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL—Filed March 9, 1929

Comes now the plaintiff and in each of the above entitled consolidated cases moves the Court to set aside each and every judgment, and to set aside each and every finding of fact in each and every of said causes so consolidated, and for grounds of this motion this plaintiff states.

1. The Court erred in admitting, over the objection and exception of plaintiff, incompetent, irrelevant and immaterial testimony in behalf of the defendant.

2. The Court erred, over the objection and exception of this plaintiff, in refusing to admit competent, relevant and material testimony offered in behalf of the plaintiff.

3. The judgment of the Court and each and every of the findings of fact made by the Court in each of said causes was against the evidence, the greater weight thereof, and was wholly unsupported by any evidence.

4. The Court erred in refusing each and every of the requested findings of fact filed by plaintiff.

5. The judgment of the Court should have been in favor of the plaintiff in each case, instead of in favor of defendant.

6. The judgment of the Court in each case was wholly unsupported by any testimony.

7. Under the undisputed evidence, the judgment of the Court should have been for plaintiff.

8. The Plaintiff was entitled to a judgment in its favor in each case as a matter of law.

Ryland, Boys, Stinson, Mag, & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ALLOWANCE THEREOF—Filed Nov. 8, 1929

To the Honorable Albert L. Reeves, District Judge:

The above named plaintiff, Uhlmann Grain Company, in each of the above entitled consolidated causes, feeling aggrieved by the judgment rendered and entered in each of said causes so consolidated on the 9th day of March, 1929, and feeling aggrieved by the action of the court in overruling motions for a new trial on the 6th day of November, 1929, does hereby appeal from said judgments and from said orders to the Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and prays that these appeals be allowed and

that citations be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgments were based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Eighth Circuit under the rules of such court in such cases made and provided.

Uhlmann Grain Company, Plaintiff, by Ryland, Boys, Stinson, Mag & Thomson, Its Attorneys.

Allowed this 8th day of November, 1929.

Albert L. Reeves.

[File endorsement omitted.]

In United States District Court

Assignment of Errors—Filed Nov. 8, 1929.

And now comes the above named plaintiff, Uhlmann Grain Company, appellant herein, by its attorneys of record, and assigns as errors upon which it intends to rely, the following errors as having intervened in the record, proceedings and judgment of the United States District Court in each of the above entitled consolidated causes, that is to say:

1. The court erred in refusing, (over the objections and exceptions of plaintiff) to find as facts the matters and things set forth in each, every and all of requests for findings of fact of plaintiff, numbered 1 to 17, both inclusive.

2. The court erred in finding as facts (over the objections and exceptions of plaintiff) each, every and all of the matters and things found by it in its findings of fact numbered 1 to 12, both inclusive.

[fols. 21 & 22] 3. The court erred in entering up judgment for the defendants in each of the above entitled consolidated cases.

4. In each of said consolidated cases the judgment of the court under the undisputed evidence should have been for plaintiff and the court erred in not rendering judgment for plaintiff in each of said causes.

5. There was no evidence in the record to support the judgments in favor of defendant in either or any of said consolidated causes.

6. The court erred in overruling plaintiff's motion for a new trial in each of said causes.

7. The court erred in permitting defendants, (over the objections and exceptions of plaintiff) to introduce evidence of alleged conversations between plaintiff's local manager, McDonough, and various of the defendants.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

[File endorsement omitted.]

In United States District Court

Order Fixing Appeal Bond—Filed Nov. 8, 1929

Considering the application for appeal this day presented in the above consolidated causes, it is ordered that the amount of the appeal bond be and it is hereby fixed at the sum of $250.00 said bond to be executed by at least two sureties, if the sureties are individuals, and if the bond is executed by a corporate surety company authorized to do business in the State of Missouri, then that one surety be sufficient; said appeal bond to be approved by the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, or by any of his deputies.

Albert L. Reeves, Judge.

[File endorsement omitted.]

Bond on appeal for $250.00, approved and filed November 25, 1929, omitted in printing.

[fol. 23] In United States District Court

Order—Filed Dec. 7, 1929, extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the 8th Circuit be extended to on or before the 7th day of January, 1930.

Dated Kansas City, Missouri, December 7, 1929.

Merrill E. Otis, Judge, in the absence of Judge Albert L. Reeves from the Western Division.

Service of a copy of the within order is hereby acknowledged this 7th day of December, 1929.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ELECTION AS TO PRINTING OF RECORD—Filed Dec. 23, 1929

Comes now the plaintiff herein and elects to have the record on appeal in the above entitled cause printed under [fol. 24] the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Ryland, Boys, Stinson, Mag & Thomson, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER—Filed Jan. 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of February, 1930.

Dated this 7th day of January, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 7th day of January, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed Feb. 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit, be extended to on or before the 7th day of March, 1930.

Dated this 7th day of February, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 6th day of February, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

ORDER—Filed Mch. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of April, 1930.

Dated this 6th day of March, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 5th day of March, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed Apr. 4, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of May, 1930.

Dated this 4th day of April, 1930, at Kansas City, Mo.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 4th day of April, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER, NOV. 6, 1929, OVERRULING MOTION FOR NEW TRIAL

This day come the parties by their attorneys and plaintiff's motion for new trial is heard and overruled by the Court.

[fol. 26] Dated this 6th day of November, 1929, at Kansas City, Mo.

Albert L. Reeves, Judge.

Filed in the United States District Court Apr. 25, 1930.

IN UNITED STATES DISTRICT COURT

ORDER, APR. 24, 1930, ENLARGING TIME TO FILE BILL OF EXCEPTIONS—Filed April 25, 1930

This day came plaintiff and made application for an order extending the time for signing, allowance and filing of the Bill of Exceptions herein, and cause being shown therefor, such application is granted, and the time for signing, allowance and filing of the bill of exceptions of the above named plaintiff, is extended from the last day of the present term of court to the last day of the April term of court, 1930.

Dated April 24, 1930.

Albert L. Reeves, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed May 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of June, 1930.

Dated this 7th day of May, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this 6 day of May, 1930.

Lathrop, Crane, Reynolds, Sawyer & Mersereau, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER—Filed June 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of [fol. 27] Appeals for the Eighth Circuit be extended to on or before the 7th day of July, 1930.

Dated this 6th day of June, 1930, at Kansas City, Missouri.

Merrill E. Otis, Judge, in the absence of Judge Reeves from Kansas City.

Service of a copy of the within order is hereby acknowledged this — day of June, 1930.

—— ——, Attorneys for the Defendants.

[File endorsement omitted.]

In United States District Court

Order—Filed July 7, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the Seventh day of September, 1930.

Dated this Seventh day of July, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

Service of a copy of the within order is hereby acknowledged this — day of July, 1930.

——— ———, Attorneys for Defendants.

[File endorsement omitted.]

In United States District Court

Order—Filed Sept. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of November, 1930.

[fol. 28] Dated this 6th day of September, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

In United States District Court

Order—Filed Nov. 1, 1930, further extending time to file bill of exceptions

This day came plaintiff and made application for an order extending the time for signing, allowance and filing of the

Bill of Exceptions herein, and cause being shown therefor, such application is granted, and the time for signing, allowance and filing of the bill of exceptions of the above named plaintiff, is extended from the last day of the present term of court to the 15th day of November, 1930.

Dated November 1st, 1930.

Merrill E. Otis, Judge.

[File endorsement omitted.]

In United States District Court

Order—Filed Nov. 6, 1930, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of January, 1931.

Dated this 6th day of November, 1930, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

In United States District Court for the Western Division of the Western District of Missouri

No. 6044

Uhlmann Grain Company, Plaintiff,

vs.

A. P. Dickson, Defendant

[fol. 29]

No. 6045

Uhlmann Grain Company, Plaintiff,

vs.

Joe Dickson, Defendant

No. 6062

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

I. N. CALVERT, Defendant

No. 6200

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

C. T. DICKINSON, Defendant

No. 6201

UHLMANN GRAIN COMPANY, Plaintiff,

vs.

ERNEST MILLER, Defendant

Bill of Exceptions—Filed Nov. 6, 1930

CAPTION

Be it remembered that on May 21, 1928, the above entitled cause coming on for hearing before Honorable Albert L. Reeves, Judge of the United States District Court for the Western Division of the Western District of Missouri, plaintiff appearing by its attorneys, Mr. Paul R. Stinson and Mr. Carl L. Crocker, of the firm of Ryland, Boys, Stinson, Mag & Thomson, Kansas City, Missouri; and the defendants appearing by their attorneys, Mr. S. J. Jones and Mr. G. C. Jones, of Carrollton, Missouri, and Mr. R. S. Righter, of the firm of Lathrop, Crane, Reynolds, Sawyer & Mersereau, Kansas City, Missouri; the following proceedings were had and entered of record in said cause, to-wit:

At the opening of the trial, counsel for plaintiff and defendants stipulated in open Court that the testimony taken was offered in all of the cases; that that testimony material only to a particular case would be treated as applying to that case only; that where material to all of the cases it will be understood as applying to each and every one of them. Before any evidence was given, defendants, I. N.

Calvert, Joe Dickson, and A. P. Dickson, objected to the introduction of any evidence in the case as to them, for the reason that the petition fails to state a cause of action against them. The objections were overruled, each defendant excepting at the time.

PLAINTIFF'S EVIDENCE

O. W. ROWE testified for plaintiff:

I am associated with plaintiff in this case. I was in 1924. Plaintiff had an office in Kansas City, Missouri, in 1924. I was in the office then and still am. I am Chief Clerk. In 1924 and now the Uhlmann Grain Company was in the grain business, operating a large elevator, doing a cash [fol. 30] grain business, and also handling grain futures. In 1924 Uhlmann Grain Company was a member of Kansas City Board of Trade, Minneapolis Chamber of Commerce, and Winnipeg Grain Exchange. It was also a member of Grain Clearing Corporation of Kansas City in 1924. It was also a member of Chicago Grain Clearing Corporation. I had charge of the records in the Kansas City office. In 1924 the plaintiff had an office in Carrollton, Missouri. Mr. McDonough was operating the office in Carrollton.

In 1924 each of the defendants had accounts with us, and had had transactions on our books. The deals consisted of trades made for their accounts and on futures on the different grain exchanges and afterwards they were closed out. There was a private telegraph wire which we had between Kansas City and Carrollton. Orders came by telegraph over this private wire from Carrollton to Kansas City. When an order came it was relayed on to Chicago, if the order was for a Chicago market. We had a private wire between Kansas City and Chicago and these orders were telegraphed to Chicago over that wire. The bookkeeping entries and records of these transactions which were telegraphed to Kansas City from Carrollton were kept in the office at Kansas City under my supervision. No books and no bookkeeping entries were made in Carrollton, showing the accounts between the Uhlmann Grain Company and the people who sent these orders in. When statements were rendered with relation to these transactions with these defendants they were mailed from the Kansas City office,

in most cases directly to the customres. In connection with these transactions checks would be sent to these defendants when they were closed. The checks were drawn in Kansas City on banks in Kansas City. In no instance were checks drawn on banks in Carrollton, Missouri. McDonough never drew any checks himself.

Plaintiff did have bank accounts in two banks in Carrollton at that time. Money and checks collected by McDonough at Carrollton would be deposited in the Carrollton banks. McDonough would get a duplicate deposit slip and send it to us here in Kansas City, and we would make the entries on our books. McDonough kept no record of these deposits to my knowledge. McDonough never drew checks on these Carrollton banks. They were drawn by the Uhlmann Grain Company at Kansas City.

Orders from Carrollton were handled in this way: Orders received at Kansas City would be telegraphed to Chicago. [fol. 31] When it was executed, we would get a wire. We got an execution of the trade after the trade had been made on the Chicago Board of Trade.

Plaintiff's Exhibit 1 (offered and received in evidence), was a private wire of Uhlmann Grain Company. Interpreted it said:

PLAINTIFF'S EXHIBIT 1

"Bought ten Minneapolis wheat one sixty-two and a half, sold ten Chicago May wheat at sixty-five and a half."

It means a trade has been made whereby the Chicago office has bought ten Minneapolis May wheat at one sixty-two and a half and sold ten May wheat at one sixty-five and a half for C. N. 76. C. N. means Carrollton and—that is a code—and 76 is the account number. That is to say, 76 is the number of one of the Carrollton accounts. In handling these transactions we give each account a number instead of a name. Fully interpreted the telegram means that Chicago has executed an order relayed from Kansas City to Chicago for the purchase of 10,000 bushels of wheat at Winnipeg and the sale of 10,000 bushels of wheat at Chicago for the account of No. 76. The telegrams also disclosed that our broker in Minneapolis bought 10,000 bushels of May wheat at one sixty-two and a half for the

account of the Uhlmann Grain Company, and Chicago sold 10,000 bushels of May wheat at one sixty-five and a half for the account of the Uhlmann Grain Company at Kansas City. In the ordinary course of events, after we got a telegram of that kind, we confirmed these trades and gave the Carrollton customer an exact copy of what we had done for his account.

When an account first starts, we, of course, designate the customer by name. Later we give him a number. That is done to facilitate the handling of messages back and forth, and to save time and space.

Plaintiff's Exhibit 2 is a confirmation of a trade executed on the Chicago Board of Trade for the account of S. P. Dickson, one of our Carrollton customers.

This is a typical confirmation which would be sent to the customer at Carrollton after we received a telegram containing the information in plaintiff's Exhibit 1. Ordinarily it would be sent to the customer direct. Sometimes to our Carrollton office, depending upon the instructions of the customer. Separate confirmations were sent on each bought and each sold transaction. The bought confirmation would be "Bought ten Minneapolis May wheat [fol. 32] at one sixty-two and a half"; the sold confirmation would be "Sold ten Chicago May wheat at one sixty-five and a half."

The confirmation would not disclose the name either of the broker or the person with whom the Uhlmann Grain Company dealt for the customer, if the transaction was on a foreign market, that is to say, Chicago, Minneapolis, or Winnipeg.

All orders received in Kansas City we retain copies of. They were also entered in our books. The trades as made are entered in the ledger. The confirmation did not disclose the name of the person with whom Uhlmann Grain Company in Chicago or Minneapolis or Winnipeg dealt. The record of the other party to the contract is not kept in Kansas City if the trade is executed in Chicago or some place besides Kansas City.

(Plaintiff's Exhibit 2 was received in evidence and is in words and figures as follows:

PLAINTIFF'S EXHIBIT 2

"No. 534

Uhlmann Grain Company, 338 Board of Trade

Fred Uhlmann, President; Paul Uhlmann, Vice-President; Richard Uhlmann, Sec'y & Treas.

Cn. 17. Kansas City, Mo., 6/26, 192-.

S. P. Dickinson,
Tina, Mo.:

We have this day bought for your account, at Chicago, Ill.

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. [fols. 33 & 34] This contract is made under authority of the Act of Congress known as "The Future Trading Act."

Quantity	Delivery	Article	Price	Bought	D of	Address
10	S.	W.	117'8	Chgo.	....	.....

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by (Signed) D.

E. O. E."

Assuming that this is an order to purchase 10,000 bushels of Chicago May wheat, Uhlmann Grain Company would make a trade with another broker—with some

broker in the pit there, some other member of the Chicago Board of Trade. No transactions are handled on either the Grain Exchanges in Chicago or Minneapolis or in Kansas City except by members of the Exchange, and with members of the Exchange.

(On motion of counsel for defendants that the testimony of this witness that these deals on the Chicago and Minneapolis Exchanges were had only with members, the testimony was stricken out, plaintiff at the time excepting.)

Plaintiff's Exhibit 3 is the account between Uhlmann Grain Company and A. P. Dickson. The transactions shown by this record cover the period between April 1, 1924, and November 13, 1924. The records were made in our office under my supervision. It is the ledger sheet of plaintiff, and it shows the balance due plaintiff.

(Plaintiff's Exhibit 3, offered and received in evidence, is in words and figures as follows:

(Here follows Plaintiff's Exhibit 3, side folios 35 and 36)

PLAINTIFF'S EXHIBIT NO. 3

Pl. E. Page 1 No 1 SHEET NO. ACCT NO. 6774 30

NAME A. P. Dickson 72

ADDRESS % Dickson Bros Carrollton Mo

DATE 1927		ITEMS	FOL	DEBITS	DATE 1927		ITEMS	FOL	CREDITS
Apr	1	ck Bal	937	34 39	Mar	31	Bals	3529	958	16 65
May	28	" amt	975	200 00				3530		17 74
June	5	Bals	3248	980	May	5	ck	mgn	959	150 00
	25	✓	3524	988		21	✓	✓	971	200 00
	27	ck amt		994	June	5	Bals	3249	980	375 87
	26	Bals	3504	989		25	✓	3530	988	16 56 79
July	29	✓	4131	3108		26	✓	3550	987	13 37
Aug	18	✓	4412	3118	July	24	✓	4132	3108	6 80
	20	✓	4440	3119		31	ck	mgn	9132	200 00
	21	✓	4448	3121	Aug	2	Bals	4216	3111	24 33
	23	✓	4591	3124			✓	4217		430
	26	✓	4613	3125		18	✓	4411	3118	53
	27	ck amt		3174		20	✓	4439	3119	53
	✓	Bals	4650	3126		21	✓	4497	3121	16 98
	27	✓	4674	3128		23	✓	4590	3124	70
	30	✓	4766	3129		24	✓	4612	3125	22
Sep	2	✓	4831	3132		27	✓	4653	3126	93
	✓	✓	4832	✓		30	✓	4767	3129	211
	15	✓	5057	3134	Sep	2	✓	4833	3132	123
Oct	18	✓	coll	3141		✓	✓	4894		784
Nov	3	✓	5687	3 2		15	✓	5058	3134	42
	8	✓	5771	3 4		24	ck	mgn	3218	300
	13	✓	5869	3 7		29	✓	✓	3223	500
					Nov	3	Bals	5685	31	3388
						✓	✓	5686	✓	872
						8	✓	5772	34	2204
						13	✓	5870	37	4656
					Clear	6	Effects Suspense		354	3714

13160 Oct

6978 Nov

2714

1850 Bank
1310 Bank Bill
540 -

[fols. 37 & 38] (Defendants objected to the offer of this exhibit for the reason that it does not contain a statement of the items or what the subject of the charges were, and is unintelligible; for the further reason that no itemized account was filed with the petition as the law requires, and the further ground that the Exhibit does not tend to prove the account sued on and is incompetent for any purpose under the pleadings; for the further reason that it was not shown that this account is an original entry.

The Witness: This is the original record that was made at the time the transactions occurred.

The Exhibit was admitted by the Court for the purpose of showing the debits and credits and state of the account between plaintiff and defendant, A. P. Dickson (defendant duly excepting at the time.)

This account shows that on November 13, there was a balance due Uhlmann Grain Company of $3,714.06. We made several demands on Mr. Dickson at or about the time this account became due. Nothing has ever been paid on it. Figuring interest at 6%, including today, the 21st of May, which amounts to $795.42, it makes the total amount due, $4,509.48.

Plaintiff's Exhibits 4, 5, 6, and 7 are ledger sheets of the plaintiff showing the accounts with the other defendants. They are original ledger accounts showing debits and credits. These records were made under my supervision at the time, and reflect the state of the account between Uhlmann Grain Company and each of these defendants for the period which they purport to cover.

(These Exhibits were offered in evidence. Defendants make the same objection to the offer of these Exhibits as was made to plaintiff's Exhibit 3, the objection was overruled, the Exhibits admitted in evidence, defendants at the time excepting.)

Said Exhibits are in words and figures as follows:

PLAINTIFF'S EXHIBIT NO. 4

P Ex 4 Atl

SHEET NO

ACCT NO 6477 2 2

NAME Joe Dickson

ADDRESS % Dickson Bros Carrollton Mo

77

1926		ITEMS	FOL.	DEBITS	1926		ITEMS	FOL.	CREDITS
Mar	17	Bals	2332	931		193 82	Mar	17	Bals 2331	98		385 28
	25	✓	2891	955		91 78		23	" 2492	955		161 44
	16	✓	2450			50 14		26	✓ 2449	✓		12 57 72
Apr	7	Ck on Pc		941		300 00		31	✓ 2527	98		21 84
June	5	Bals	3250	980		179 59		✓	✓ 2878			23 56
	27	✓	3436	986		87 74	May	5	Ck mgn	959		146 00
	24	Ck on Pc		992		300 00	June	5	Bals 3250	980		320 00
	28	Bals	3655	992		460		27	✓ 3437	986		134 84
July	29	✓	4127	908		532 46		29	✓ 3656	992		233 75
Aug	8	✓	4408	918		476 28	July	29	" 4128	908		177 37
	19	✓	4420	919		1251 16		31	Ck mgn	913		220 00
	21	✓	4508	921		1289 55	Aug	2	Bals 4218	911		30 58
	25	✓	4601	9120		476 29		✓	✓ 4219			430 57
	26	✓	4626	9122		107 15		18	✓ 4407	5918		556 13
	27	✓	4656	9126		600 55		19	✓ 4435	919		1133 65
	"	✓	4709	9127		456 71		21	✓ 4509	922		1158 95
	30	"	4762	9129		376 29		25	" 4600	926		291 55
Sep	4	Ck on Pc		9183		1200 00		26	✓ 4675	9175		206 36
	3	Bals	4862	9132		339 36		27	" 4655	9176		298 22
	"	✓	4898	9133		613 85		✓	✓ 4710	9177		486 89
	15	✓	5059	9134		644		25	✓ 4763	9129		186 68
Oct	18	✓	5172	9135		2770	Sep	3	✓ 4863	9132		211 21
Nov	3	✓	5690	92		2610		"	✓ 4866			38618
	8	✓	5777	94		63 10		✓	✓ 4877	9133		6986 64
	13	✓	5871	97		1351 20		15	✓ 5060	9134		3923
								23	Do office	9144		27 27
								28	Ck mgn	9218		6000 00
								25	Do office	9144		27 26
								26	✓	9145		27 26
								29	Ck mgn	9223		500 00
					Nov	3	Bals	5638	92			872 09
						✓	✓	5689	✓			2545 91
						8	✓	5778	94			2248 92
						13	✓	5872	97			4759 39
					Dec	6	Ck to Eugene		956			3423

1800 Lbs
135 Bottles
420

PLAINTIFF'S EXHIBIT NO. 5

PE S-Fed

SHEET NO 1 ACCT NO 78

NAME 2 M Calvert

ADDRESS Carrollton Mo

1977		ITEMS	POS.	DEBITS	1978		ITEMS	POS.	CREDITS
Feb	26	Bal S	2153	63374	Jan		ck mgn	915	6332
Mar	17	ck Morgan	926	20000		6	"	917	20000
	17	Bal S	2330	34481		17	Bal S	2374	46637
	25	✓	2699	5360		20	✓	2378	383 4770
Apr	2		2568	7569		24	✓	2416	2344 11437
	10	✓	2663	7622		25	✓	2440	2355 24 11755 19
May	8		2771	7722	Apr	9		2651	7862 14 12 4215
June	7	ck Morgan	2887	66 15000 00		22	ck mgn		615 50000
	7	Bal S	3295	78 15743		27	Bal S	2718	7711 62 30135
		✓	3296	- 240623		28	✓	3139	8771 739 32 1797
	28	✓	9652	7992 19927 94	June	7		3297	9811 8453 36
July	3	✓	3780	8296 44737		18	ck mgn	9888	6 19 30000
	7	✓	3850	8373 56802		28	Bal S	3651	8772 23871 75
	12	✓	3906	8400 56777		28	✓	3674	8772 94 505
Aug	4		4272	8712 56552 20		28	✓	3675	- 1172 9451
	6	✓	4269	8713 44736	July	3	✓	3731	8796 5 13 07 59041
	7	✓	4278	8714 44853				3800	1478 98
	13	✓	4353	8717 1476		8	✓	3821	8797 1172 43 5 10 92 43 5 43 17
		✓	4376	✓ 51302		25	ck mgn	9125	8 00 500 00
	19		4421	8719 78455	Aug	6	Bal S	4270	8713 6 36 72 1599 03
	20	✓	4437	8719 14062			✓	4273	8713 4773
	22	✓	4329	8722 29455		11	✓	4318	8715 8 01 15 43
	26		4623	8725 7806		18	ck mgn	9962	8 15 23
	29	✓	4707	8727 10 5446		20	Bal S	4438	8719 5 55 62
	29	✓	4731	8728 10 39965		22	✓	4837	8722 1117 21397 29
		✓	4740	8728 29955		29	✓	4852	8723 10 48128
		✓		36377			✓		19308
Sep	4	✓	4916	8734 11 9851			✓	4553	- 746 29 23602
	18	✓	5109	8741 11 20048		25	✓	4592	8726 10 5 28 28
Oct	23	✓	5551	8756 25160		25	✓	4606	8726 560
Nov	3	✓	5695	8772 91664 80		26	✓	4620	8725 13685
	8	✓	5769	8784 11 7005			✓	4621	- 624 30
				3 4899 90			✓	4622	✓ 22 99 45
						29	✓	4741	8728 500 11 4233 08
					Sep	2	✓	4811	8791 11 4233 20
						4	✓	4715	8734 11 9551 48
							✓	4919	8736 19923
		Ford		25349 42				Ford	12251 57

36337
14766
1319 80

Imco Bank
1319 80 Collection
8198 80

ACCT. NO CN 8 SHEET NO 2

NAME J. N. Calvert

ADDRESS Carrollton Mo

79

1924	ITEMS	FOL.	DEBITS	1924	ITEMS	FOL.	CREDITS
	Brat Ford		2584942		Bratford		1225151
				Sep 12	Bvd. 5105	J138	8071
				18 ✓	5110	J101	16146
				19 ✓	5114	J102	2465
				27 ✓	5117	J116	21870
				Nov 3 ✓	5496	J2	109575
				8 ✓	5770	J4	81894
				Dec 6	Tr to Duquesne	J54	38626

PLAINTIFF'S EXHIBIT NO. 6

Pex 6-HW

SHEET NO. 1 ACCT. NO. CM-12

NAME Ernest Miller

ADDRESS Tina Mo

83

19						19				
Apr	5	Bob	3407	980	583333	Feb	28	ck	mgn	924	500000
June	6	"	3266	980	202110		29	Bob	3177	946	7278
	9	"	3306	982	204114	Mar	14	ck	mgn	924	500000
	10	ck	mgn	984	204152		28	"	"	933	500000
	24	Bob	3478	987	199122						
	26	"	3543	989	296033	May	17	"	"	970	400000
	29	"	3608	990	102334	June	6	Bob	3267	980	417776
	28	ck	cash	994	227812		9	"	3307	982	450077
					278146						
					1000000		18	ck	mgn	988	400000
Aug	21	Bob	4478	9120	232265		24	Bob	3479	987	3465
	27	"	4562	923	372429		26	"	3504	984	3187
	26	ck	cash	972	3710256		27	"	3609	995	3455
	29	Bob	4796	9128	1000000						
					938772	July			3723	995	4062
		"	4763	"	1151138		18	ck	mgn	996	1200000
Sep	2	"	4909	9133	1191066		31	"		9132	1200000
					1244143						
	16	"	5072	9140	1532149	Aug	21	Bob	4476	9120	2272
Oct	16	"	5101	9153	1597890		23	"	4561	9123	2385
Nov	13	"	5883	97	2326732		29	"	4737	9128	2411
	14	"	5945	99	1050901		"	"	4743	"	1222407
	18	"	6051	911	2010603	Sep	3	"	4902	9133	1736
	19	"	6094	912	446310		16	"	5074	9140	2786
	25	"	6174	915	1001120	Oct	2	ck	mgn	9129	1000000
							13	"	"	994	1000000
							28	Current Deposits		9150	2506
						Nov	12	Bob	5823	95	730649
							"	"	5824	96	2204774
							13	"	5887	97	2347538
							14	"	5946	99	3247891
							18	"	6052	911	2035977
							19	"	6093	912	2741721
							25	"	6175	915	2903155
						Dec	1	Effects Assignment		954	3166443

2890 25 dust
56 00 cuttings
2946 25

PLAINTIFF'S EXHIBIT NO. 7

Pltf 7 = Page 1 thru

SHEET NO. 1 ACCT. NO. C71 59

NAME C R Dickinson

ADDRESS R 3 D 5 [illegible]

81

1932		ITEMS	FOL.	CREDITS	1932		ITEMS	FOL.	CREDITS
July	28	Pds · 4096	3107	100 67	July	28	Pds · 4097	3107	318 95
Sep	3	✓ · 4872	3133	156 72	Sep	3	✓ · 4871	3193	224 24
	4	✓ · 4918	3134	[illegible]		4	✓ · 4917	3134	[illegible]
	16	✓ · 5075	3140	[illegible]		16	✓ · 5076	3140	[illegible]
Oct	16	✓ · 5434	3153	303 185	Nov	26	✓ · 6206	316	230 471
Nov	26	✓ · 6207	316	37560	On	h	[illegible]	3154	[illegible]

Rec 7 - Page 2 No

SHEET NO 1 ACCT. NO C7117

NAME S P Oakman

ADDRESS Tina Mo 82

1927		ITEMS	FOL.	CREDITS	1928		ITEMS	FOL.	CREDITS
April	12	Prb · 2705	$84	248 06	Mar	1	ck mdse	$15	500 00
	15	ck amt	$46	4800 00		3	" "	$16	250 00
June	4	Prb · 3210	$79	1468 38		12	Prb · 3760	$87	1632 71
	6	ck amt	$80	4500 00		14	ck mdse	$24	300 00
	19	Prb · 3391	$85	2586 94					3232 71
	25	" · 3522	$88	6[illegible] 95		28	"	$33	4800 00
	26	" · 3553	$89	5[illegible] 14	May	20	Prb · 3057	$75	1877 21
July	2	" · 3739	$95	[illegible] 86					9778 53
	22	" · 4038	$105	[illegible] 58	June	4	" · 3211	$79	560 56
Aug	5	" · 4253	$112	[illegible] 70		19	" · 3390	$85	4980 07
	21	" · 4484	$121	[illegible] 73		25	" · 3523	$88	1[illegible]
Sep	3	" · 4859	$131	376 86		26	" · 3554	$86	[illegible]
		" · 4898	$133	[illegible] 85	July	2	" · 3740	$95	[illegible]
	16	" · 5079	$140	[illegible] 52		22	" · 4039	$105	[illegible]
Sep	19	ck amt	$211	500 00	Aug	5	" · 4254	$112	[illegible]
Oct	10	ck Bal for cat	$92	60 250		21	" · 4485	$121	[illegible]
	16	Prb · 5482	$113	96 15 50		31	" · 4860	$132	[illegible]
Nov.	13	" · 5882	$87	2313 83	Sep	3	" · 4861	"	411 [illegible]
	14	" · 5943	$88	250 30			" · 4893	$133	761 [illegible]
	18	" · 6043	$111	1006 60		16	" · 5080	$140	[illegible]
	19	" · 6097	$112	138 10		29	ck mdse	$224	2000 00
	25	" · 6194	$115	744 65	Oct	6	"	$33	6000 00
						10	"	$91	6025 50
					Nov.	12	Prb · 5845	$96	1367 73
							· 5846		2193 48
						13	" · 5881	$97	2335 87
						14	" · 5944	$89	1130 47
						18	" · 6044	$111	1210 98
						19	" · 6097	$112	4991 48
						25	" · 6195	$115	1614 42
					Dec	6	Tfr to Mayme	$358	3[illegible]

9975 22

Sls 32732
2415 50

Jan 1928
3550
110

PEO 7-HW: Page 3

SHEET NO. 1 ACCT. NO. CM"7

NAME W L Dickinson

ADDRESS Carrollton Mo

83

1942		ITEMS	FOL.	✓	CREDITS	1942		ITEMS	FOL.	✓	CREDITS
Feb	25	Bal. 2142	955		10387	Feb	26	Bal. 2163	955		24149
Mar	15	Check	924		23632	Mar	4	Ck. mdse	916		5000
	14	Bal. 2302	950		38708		14	Bal. 3901	950		43578
	26	" 2458	955		49527		26	" 3957	955		44267
Apr	4	" 2576	960		53627	Apr	4	" 3977	960		44899
May	23	" 3084	975		68834	May	27	" 3985	975	62	26308
June	4	" 3201	979		101547	June	4	" 3200	979	25	1 30 154
	24	" 9461	987		105947	240	22	" 3960	987		58
	27	" 3627	991		115206		27	" 3630	991		68706
	"	" 3630	991		21 57412		27	" 3629	991	48	12866
aug	12	Check	953		1 5 9 8	July	1	" 3719	995	437	18737
	21	Bal. 4481	921		3 6 3 3	aug	21	" 4482	921	200	19 6
Sep	2	" 4822	932		3 8 5 3	Sep	2	" 4821	932		3 5 1
	3	" 4870	933		3 9 4 2		3	" 4869	933		3 2 3
	"	" 4890	9133		6277		3	" 4889	9133		4 3
	16	" 5081	940		3 4 4 3		16	" 5082	940		3 9 3
Oct	16	" 5443	953		3 5 0 5	Nov	19	" 6101	912		3 8 5 1
Nov	19	" 6102	912		4 1 7 5		26	" 6208	916		4 1 7
	26	" 6209	916		30						
					22560	Dec	6	Life & Expense	950		26 1
											454743

4970 #1
393.42
1547.74
8 11/29

38632 Rec'd
50 - Collected
33632

[fol. 53] Demand for payment has been made upon each of the defendants at or about the time each of these accounts was closed. No payments have been made on any of the accounts. The amounts due from each defendant are as follows:

Joe Dickson account was from March 17, 1924, to November 13, 1924, and the amount shown due at that time was $3,632.25. The amount of interest since that time is $771.91, and the total due is now $4,410.16.

The next account is I. N. Calvert. The date is from February 6, 1924 to November 8, 1924; the amount due us at that time was $3,886.20, the interest $835.53, making a total of $4,721.73.

The next account is Ernest Miller. The period is February 28, 1924, to November 25, 1924. The amount due us is $3,106.43, interest $659.08, total $3,765.51.

As to the last three accounts, C. R. Dickson, C. P. Dickson, and E. L. Dickson, we have notes signed by Mr. C. T. Dickson, who has guaranteed the notes. For C. R. Dickson, the period is July 28, 1924 to November 26, 1925, the amount due, $782.27, the interest is $165.84, making a total of $948.11. S. P. Dickson, the period is April 12, 1924 to November 25, 1924, the amount due us is $2,415.52, interest $512.49, total $2,928.01. W. L. Dickson, February 25, 1924 to November 26, 1924, amount due us $1,547.43, interest $328.05, total $1,875.48.

I have here a record showing when orders were executed for sale and purchase for the defendants; I have the record showing what the transaction was. I have an itemized statement of the A. P. Dickson account showing in detail all of the trades that were made for that account.

(Here plaintiff's counsel had marked for identification plaintiff's Exhibit 8, 8-a, and 8-b.)

Exhibit 8 is a copy of the original purchase and sale of 10,000 bushels of Chicago September wheat, merely an accounting of the purchase price and of the price sold, showing the net result of the credit to the customer of $16.65. It is an accounting of the purchase and sale of 10,000 bushels of Chicago September wheat. Exhibit 8-a is a confirmation of a trade we made on the purchase of 10 Chicago September

wheat, and Exhibit 8-b is a confirmation of the sale which [fol. 54] we made on the 10 Chicago September wheat. These are copies of confirmations. The originals were sent to the customer on the dates they bear; these are copies made by our office from our records. In each transaction with the defendants records similar to these were made and the originals mailed to the customer at or immediately subsequent to the time the sale was made or the purchase made. They received the originals on every transaction we made for them. This is true as to every one of the defendants. These accounts were sent out to the customer on the same day the transactions were executed.

Plaintiff's counsel offered these Exhibits in evidence. Defendants objected to the offer of Exhibits 8, 8-a and 8-b, not because they are copies, but because they do not identify themselves with the account attached to the petition; the reason being there is no itemized statement attached to the petition and that they are inadmissible to prove any item or items that are set forth in the attached account.

"The Court: Well, I understand that, no proof, of course, that they were actually mailed. However, if there is any question about them being received by the customers in this case, the defendants, then counsel would have to make proper proof.

Mr. S. J. Jones: No, I don't want to do that; that is, as far as sending out these statements that were sent out, they are true.

The Court: Now, I understand the objections made here by counsel is one of a typical case, and the proof is that the same transaction occurred with respect to each item in the account of each defendant. That is the proof. I mean, that is what it contains.

Mr. S. J. Jones: I don't know as to that.

The Court: You are not objecting to it on that ground?

Mr. S. J. Jones: Oh, no. My ground is that this account attached to the petition and the statement here does not connect up with the purported account filed; doesn't tend to prove the particular account or the amount sued upon.")

These accounts went through the journal and then on to the ledger.

(Said Exhibits were admitted in evidence, defendants at the time excepting.)

[fol. 55] Exhibit 8 is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8

"Uhlmann Grain Co., Grain Merchants

No. 2529

Account Purchase and Sale of 10 Chgo. Sept. Wheat for Account and Risk of A. P. Dickson, c/o Dickson Bros.

Bought CN 30					Sold CN Mo.				
Date	Quan'y	Commodity	Price	Cost	Date	Quan'y	Commodity	Price	Proceeds
3, '31	10	S.W.	103¾⅛	10,381.25	3, '28	10	S.W.	104¼	10,425.00
		Commission....		25.00					
		Stamp Tax....		2.10					
		Gain.....		16.65			Loss.....		.....
				10,425.00					10,425.00

To Credit 16.65.
Kansas City, Mo., 3-31, 1924."

Said Exhibit 8-a is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8-A

No. —

Uhlmann Grain Company, 338 Board of Trade

"Fred Uhlmann, President; Paul Uhlmann, Vice-President;
Richard Uhlmann, Sec'y & Treas.

Kansas City, Mo., 3/31, 1924.

CN 30.

Mr. A. P. Dickson, Carrollton, Mo.:

We have this day bought for your account, at Chicago, Ill. All transactions made by us for your acount contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you

[fol. 56] are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

Quantity	Delivery	Article	Price	Bought of	Address
10	S.	W.	103¾ ⅞	Chgo.	.....

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by D."

Said Exhibit 8-b is in words and figures as follows:

PLAINTIFF'S EXHIBIT 8-B

Uhlmann Grain Company, 338 Board of Trade

"Fred Uhlmann, President; Paul Uhlmann, Vice-President; Richard Uhlmann, Sec'y & Treas.

No. —

Kansas City, Mo., 3/28 1924.

CN 30.

Mr. A. P. Dickson, Carrollton, Mo.:

We have this day sold for your account, at Chicago, Ill. All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under au-

[fol. 57] thority of the Act of Congress known as "The Future Trading Act."

Quantity	Delivery	Article	Price	Sold to	Address
10	S.	W.	104'4	Chgo.	.....

We do not consider orders open from one day to next, unless by special instructions.

Uhlmann Grain Company, by D."

The transactions as recorded on these sheets here, were reflected on our ledger sheets that were introduced in evidence this morning. This appears on the ledger sheets that were offered in evidence this morning with relation to every one of the defendants. I have all of the records of which this is typical, showing the items of debit and credit reflected on the original ledger sheets as to each one of these defendants. I have compared them to see whether or not they properly reflect the items as shown on these statements. They are correct in each instance. These items were posted from the journal. The journal was made up of these loose sheets. Entries were made in the journal from the P. & S. "P. & S." means purchase and sale. These are copies of original entries made by the Uhlmann Grain Company reflecting these transactions.

All of these statements represent and reflect the moneys which we paid out in excess of the moneys which we received covering the trades that we made for their account, plus our commission. These are the original memorandum sheets from which the journal sheets were made, and from that posted to the ledger. These are the original records that were made of the transactions.

None of the items in these transactions represent any profit made by the Uhlmann Grain Company out of any loss by any defendant in any transaction.

The transactions as shown on this typical P. & S. account were consummated or made on the Chicago Board of Trade. They were executed by purchase and sale in the pit—the Chicago pit—with another broker. The Uhlmann Grain Company would be a party to the transaction—one party to the transaction. The other party would be whoever the broker was on the other side that bought or sold. These [fol. 58] transactions executed on the Chicago Board of Trade were always executed between members of the Board

of the Exchange itself. I have before me all of the P. & S. statements. I have examined them. Among all of these transactions only one was executed on the Kansas City Board of Trade. It was one on September tenth. We bought 10 Kansas City December wheat at $1.18⅞, and on November 3 we sold 10 Kansas City December wheat at $1.30. That is on the account of Mr. I. N. Calvert. That is the only Kansas City trade we have on this account. It resulted in a profit to Mr. Calvert of $1,112.50. Mr. Calvert was given credit for that and no attempt is being made to recover any part of that in this lawsuit. It is not involved so far as any recovery is sought in this case. Credit was given to Mr. Calvert and this was deducted from the balance due us. Outside of that one transaction, none of these transactions of purchase and sale was executed on the Kansas City Board of Trade. All of them were executed on the Boards of Trade of Chicago, Minneapolis or Winnipeg.

Plaintiff's Exhibit 9 is a typical telegram made up by our operator in Chicago who received a telegram from the Kansas City office. A typical transaction initiating in Carrollton for execution say in Winnipeg would be this: We would receive a wire from our representative at Carrollton that would read like this: "Buy 10 Chicago December wheat; sell 10 Winnipeg October wheat, at 3 cents difference, account CN-219," which our operator in Kansas City would receive and relay to Chicago, and Chicago would receive it in this manner. This is a reproduction of the operator's receiving of the message in Chicago. (i. e. Exhibit 9) If it was a Winnipeg transaction, the Uhlmann Grain Company at Chicago would wire to our broker in Winnipeg to sell 10 Winnipeg October at a certain price. The Chicago office would receive a wire from the broker in Winnipeg saying that he had sold 10 Winnipeg October at a certain price. When this information was received at Chicago, Chicago would, in turn, wire the Kansas City office that they had bought 10 Chicago December wheat and sold 10 Winnipeg October wheat for the account CN-219. Then Kansas City would notify CN-219 by a confirmation of his trade, which we have already seen, stating that we had bought 10 Chicago December and sold 10 Winnipeg October wheat, giving the price on which the trade was actually executed.

By Mr. Stinson:

"Q. What record, in a general way, without going to any specific one, would be made by the Kansas City office showing first the name of the customer, by whom this transaction [fols. 59 & 60] was executed, what record would there be in Kansas City of it?

A. There would be a wire from the Chicago office that these trades were executed for this account number. And this Account number, of course, we would put into our ledger an exact reproduction of the trade from Chicago.

Q. What about a record of the telegram that came from Carrollton to Kansas City for the execution of the order?

A. I don't know whether we have that or not.

Q. Well, you would have it.

A. Well, we had it at the time, there is no question about that.

Q. What about the terms of the transaction as to the price and terms of delivery?

A. The price would be stated—on the order to buy, you mean, or the execution of the order?

Q. Well, on either one.

A. Yes, the price would be stated at the place where the actual transaction was made, also the delivery.

Q. This record you have in front of you, what does that show with relation to that typical transaction? What does it show about the parties to the transaction or your customer?

A. It shows we bought 10 December wheat and sold 10 Winnipeg October wheat.

Q. For whom?

A. For account CN-219.

Q. Do you have a record showing who CN-219 is in your Kansas City office?

A. Yes, sir.

Q. Would it show the price here, this record here, and does it?

A. Yes.

Q. Does it show the terms of delivery, what month delivery is to be made in, or the purchase?

A. Yes, sir.

Q. So you have got that record right there, haven't you?

A. Yes, sir; I have this record here.

Q. Do any Kansas City records, typical records of these transactions, show the name of the person with whom the Uhlmann Grain Company contracted in behalf of the customer?

A. In Chicago?

Q. In Kansas City. Do any Kansas City records show that?

A. No, sir.

Q. These records are shown in Chicago?

A. Yes, sir."

All orders executed for all of these defendants with the exception of the one for Calvert were relayed by the Kansas City office in Chicago and executed by the Chicago office, either on the Chicago Board of Trade or on one of the other Boards of Trade.

Plaintiffs' Exhibit 9 is in words and figures as follows:

(Here follows exhibit, side folios 61 & 62, 63 & 64)

UHLMANN GR

BUY

1000 1

3400 1/8

10

13453/8

Pltf's Ex. 9

AIN CO. 8/19 30

SELL

10/1/49 oct N

10/7/8

137/8 Sea

0 79

UHLMANN GRAIN ACCOUNT

PLAINTIFF'S EXHIBIT NO. 9

61-62

CLASS OF SERVICE	SYMBOL
Telegram	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT GEORGE W.

RECEIVED AT CHICAGO BOARD OF TRADE OFFICE

23GD NP 11

"Gd"

UHLMANN

SOLD 10 OCT WHT 139 7/8

SEABOARD

857A

STANDARD TIME

Form 1218

UNION

RAM

GE W. E. ATKINS, FIRST VICE-PRESIDENT

CLASS OF SERVICE	SYMBOL
Telegram	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a telegram. Otherwise its character is indicated by the symbol appearing after the check.

AUG 19 1924

d" Winnipeg, Man.

5/13

63-64

[fol. 65] Plaintiff's Exhibits 10, 11, 12 and 13 are promissory notes executed and signed by C. T. Dickson, Ernest Miller, C. R. Dickson and W. L. Dickson. Each one of the Dickson notes is signed by C. T. Dickson. He is the only Dickson who was sued in these cases. The note signed by Ernest Miller is signed by the Mr. Miller who is one of the defendants in these cases. The actual amount due from these defendants in these cases where notes are involved, in some instances are less than the amounts of the notes. In some instances they are greater.

PLAINTIFF'S EXHIBITS 10, 11, 12, 13

Said Exhibits 10, 11, 12 and 13 offered by plaintiff were received in evidence.

Plaintiff's Exhibit 10 is a promissory note for $4,000.00, dated October 8, 1924. The maker is C. L. Dickinson and the payee is Uhlmann Grain Company.

Plaintiff's Exhibit 11 is a promissory note signed by W. L. Dickinson and by C. L. Dickinson, is payable to Uhlmann Grain Company. It is for $3,000.00, is dated October 8, 1924, and is payable 90 days after date.

Plaintiff's Exhibit 12 is a promissory note signed by C. R. Dickinson and C. L. Dickinson. It is dated October 8, 1924, is for $1,000.00, is payable 90 days after date.

Plaintiff's Exhibit 13 is a promissory note signed by Ernest Miller, dated October 8, 1924, is for $4,000.00, is payable in 90 days, and the payee is Uhlmann Grain Company.

Where a customer makes a purchase and sale, or vice versa, which results in a loss, Uhlmann Grain Company pays it through the clearing house where the trade would clear, or we would pay it as a margin to our broker. When trades are made, for instance, on the Chicago Board of Trade, after the market closes that day, a settlement is made with the clearing house at or on the basis of the closing, whatever delivery month it might be. If we owed the clearing house any money after our report was made, we either paid them, or if we had money coming in from the clearing house we collected a check from the clearing house and our brokers did likewise.

[fol. 65] Plaintiff's Exhibits 10, 11, 12 and 13 are promissory notes executed and signed by C. T. Dickson, Ernest Miller, C. R. Dickson and W. L. Dickson. Each one of the Dickson notes is signed by C. T. Dickson. He is the only Dickson who was sued in these cases. The note signed by Ernest Miller is signed by the Mr. Miller who is one of the defendants in these cases. The actual amount due from these defendants in these cases where notes are involved, in some instances are less than the amounts of the notes. In some instances they are greater.

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During all this time the plaintiff was a member of the Clearing House of the Chicago Board of Trade, but was not a clearing member in Minneapolis or Winnipeg. The only difference between Chicago and Winnipeg and Minneapolis is that the trades would be cleared in Winnipeg or Minneapolis through the clearing house by the broker who [fol. 66] executed the trade for our account. The Chicago Uhlmann Grain Company would clear through the clearing house direct. So that whenever there is a debit charge against any of these defendants in any one of these transactions shown by these P. & S.'s, it reflects an actual payment of the amounts charged against the customer by the Uhlmann Grain Company. In the instances when the transaction resulted in a profit, we sent them checks. They would be mailed out at Kansas City to the customer in Carrollton, or to our office in Carrollton for the customer, if he so directed.

Uhlmann Grain Company always kept up a margin with the Chicago Clearing House. In Winnipeg and Minneapolis our brokers, who are members of the different markets there, have the same clearing systems that we have all over. It is universal. They have to make the same reports to their clearing house as we do here in Chicago, and of course margins would necessarily have to be kept up with our broker in the outside market.

In a typical day, if at the end of a day's trade, Uhlmann Grain Company owed the clearing house it would send the clearing house a check. This is done every day. If the clearing house owed the Uhlmann Grain Company it would send us a check. In other words, Uhlmann Grain Company was behind each one of the transactions executed for the customer. The trade was made in our own name for each account in each instance.

Cross-examination:

Purchases on the Chicago Board of Trade and other Boards of Trade were made by the Uhlmann Grain Company in the manner I have described. These settlements made at the end of the day were between the Uhlmann Grain Company and Grain Clearing Company. Every trade is cleared through the clearing house. I mean by that, when the Uhlmann Grain Company makes purchases on the Chi-

cago Board of Trade it purchases from another broker. At the end of the day the two brokers settle through the clearing house; that is to say, the Uhlmann Grain Company settled its transactions that day with the clearing house. As far as we are concerned, the only parties to the transaction would be the Uhlmann Grain Company and the clearing house. We would buy grain from a broker on the other side of the clearing house. For instance, if Uhlmann Grain Company here in Kansas City were given an order to buy 10,000 bushels of wheat for May, the transaction would be made with some broker. We would make the trade for our customer's account. If you would make [fol. 67] an offer to sell your wheat someone would have to bid for it, and after the trade was executed you would find out who it was. The parties to the transactions would be the Uhlmann Grain Company and the broker at the other end.

I had no record other than the books and documents that I have referred to in previous testimony. I have not the journal with me, I have it at my office. I have here the originals of what the journal is made up from. We take a copy of this trade here when the trade is closed, to make the journal entry.

Our journal shows on the credit side that checks were received from the customers, and on the debit side the money we sent them. It also shows losses and profits on the trades which we have made too, and for that reason there are two different journals. The journal shows the number of bushels bought by the customer or sold by the customer on each different item. I could tell from these records how many bushels of grain Mr. Joe Dickson, for instance, bought and sold from the time that account was opened until it was closed. I will get those figures and produce them tomorrow.

(Here counsel for defendants asked witness to get such a record with reference to each defendant.)

Uhlmann Grain Company opened its office at Carrollton in the first part of 1924. I have never been at Carrollton myself. I bought the equipment that went there. We sent the equipment down from Kansas City. I know there was a telegraph instrument there. There was a private wire that

ran from that office to our office here in Kansas City. Its purpose was to transmit and receive messages. We received the grain market quotations here at Kansas City from the outside market. By outside market I mean Chicago, Minneapolis or Winnipeg. They come in often during the day. When we got that information at Kansas City it was relayed to Carrollton. We get these quotations over the ticker; they were relayed from Kansas City to Carrollton from the blackboard. All quotations went over this private wire to Carrollton.

McDonough was what we call our office manager at Carrollton. He had charge of it; and was out there representing the Uhlmann Grain Company. I know it to be a fact they put him in charge of that office. He was sent down there by Mr. Paul Uhlmann. Paul Uhlmann is Vice-President of Uhlmann Grain Company and manager of the Kansas City office.

[fol. 68] When an order was placed at Carrollton it was wired to Kansas City, then relayed to Chicago, and then Chicago relayed it to the other broker. That is, it was wired first to the Uhlmann Grain Company at Kansas City; then relayed to Chicago. If it was to be executed on the Minneapolis or Winnipeg market, it was then wired from Chicago. The reason it was wired from Carrollton to our office in Kansas City, naturally it would be wired here. You couldn't execute any trades from Carrollton. I had nothing to do personally with the transmission of any of those messages. I know that they were transmitted. I wasn't present all the time, but I have seen the wires that were sent. I am not a telegrapher myself. I did not have personal contact with these transactions; the only time I came in direct contact with them was when the trades were closed. That was in the capacity of bookkeeper or superintendent of keeping accounts.

Among other things, the Uhlmann Grain Company was dealing in grain futures. When these men bought grain, ordinarily they were required to put up margins. These margins were required for our protection. When we make a trade we make it in our name for the customer, and we are liable to the clearing house for the fulfillment of those contracts that we make for our customers. The margin was to protect us from any losses we might sustain in ful-

filling those contracts. There would be no loss unless there was a difference in the market. The purpose of the margins was to guard against our liability with the clearing house so far as fulfilling contracts we had made for those customers. The margin required per bushel varied. I do not remember what was required of the Carrollton customers. Nor do I remember whether all of them were required to put up margins.

"A. Well, if a man would buy grain at a certain price and the market would go down three or four cents a bushel, you know he wouldn't have a profit.

Q. He would lose, wouldn't he?

A. He would not have a profit."

If the market went the other way he made a profit.

If a customer bought 10,000 bushels at a certain price, that would be the contract price. If it was sold for more than that he would have a profit. In determining whether or not he had a profit or a loss, you would take the price at which it was bought and the market price at which it was sold. That is the way it was done; the trades were all closed out. During the period when these defendant customers were operating we would call on them to put up [fol. 69] money in the way of margins. This would be done if their account showed a loss at the time.

"A. Well, if their account showed a loss at the time, between what they had bought it and what they had sold it, and the present markets, that would determine how much they owed us or how much we owed them.

Q. That is right. And if you owed them, you wouldn't call on them for the margin, would you?

A. No, not if they had a profit on the trade.

Q. But if they had a loss there, you would call on them for more money?

A. They would be expected to margin their trade to the market.

Q. Now, in a general way, what you have stated is the way these trades were carried on, all of them?

A. That is true; yes, sir."

Among other things the Uhlmann Grain Company did, was dealing in grain futures.

Futures are commodities dealt in at a deferred time. For instance, if you give me an order to buy 10 Chicago December wheat, or Kansas City wheat, that would be a deferred future. Ordinarily, we would require a margin in connection with an order dealing in futures.

The transactions of these defendants would probably embrace several hundred thousand bushels of grain. Not a single bushel of it was ever delivered to my knowledge. It is not in the records. As far as the records are concerned, there wasn't a single bushel delivered, either bought or sold.

I am not an authority on the term "offered." I have heard of offers in connection with grain speculations on the Board of Trade. A "spread" is where you buy in one market and sell in another market, equal amounts. I presume you call that speculation. The spreads were on the Chicago Board of Trade and the Winnipeg market. The purpose of a spread would be, naturally, one would think that buying on that market, you would be figuring on going up, and if selling on another, figuring on going down, while one might be stationary and the other might go up.

A transaction would be settled in the end on a spread in this manner: If you had Winnipeg sold and Chicago bought, when the transaction would be completed it would be an execution of equal amounts, and vice versa. In other [fol. 70] words, you would buy in Winnipeg and sell in Chicago to close out the trade. In other words, if a man bought in Winnipeg and sold in Chicago and closed, he would have to sell in Winnipeg and buy in Chicago in order to complete the trade. The profit or loss in the transaction would be ascertained in this way: If you buy anything at a certain price and sell it at a price above that, you determine how much money you will have made by the net result. This is the same thing. That is, by taking the difference between what you bought it at and what you sold it for. That is the way these transactions were determined.

Every transaction whether these men won or lost, was determined by the purchase price and what it was sold for. Our commission does not become due on these trades until they are closed; that is, when both ends of it are closed out. That is by rule of the Exchange.

We had about fifty customers at Carrollton. All correspondence had with these defendants and other custom-

ers at Carrollton, was sent from Kansas City. Defendants' Exhibit A was written at our Kansas City office. I know Mr. McDonough's duties in a general way. He was just an office manager. I rather think he solicited these men to engage in these trades. That was one of his duties. I do not know whether a part of his duties was to advise them about the market. Among other things, McDonough bought and sold some cash grain for some of the men in Carrollton at the time. On all of these statements we sent out from Kansas City, the name of the seller or the purchaser was not given. In outside market trade it was not disclosed to any of these defendants who their grain was sold to in those cases where it was a sale, or who it was bought from when it was bought. On trades we had in Kansas City that would show, though. We did not send the Minneapolis orders direct to Minneapolis, because we have a direct wire from Kansas City to Chicago.

Redirect examination:

The capacity of the grain elevator in Kansas City in 1924, owned by the Uhlmann Grain Company was 1,300,000 bushels. A hedging transaction is this: We sell 10,000 bushels of cash grain; we buy our hedging to protect ourselves against loss in the fluctuation in the market. In other words, whenever we make a purchase of cash grain we sell futures, and when we sell that cash grain we buy the futures back in. That is what is called "hedging." Where there is a hedging of a purchase or sale, the only loss or profit that could be sustained would be either a re-[fol. 71] duction in the premium between the cash grain and the future. There is no element of speculation in a cash grain purchase or sale. None of the orders sent out by the Uhlmann Grain Company with other brokers in these markets or grain exchanges show whether or not the transactions are hedging transactions as far as either party to the contract is concerned. There is no way of determining what the intention of the other party to the contract is with reference to that; either the broker's customers or the broker himself. The quotations published on the blackboard at Carrollton represented actual transactions of purchase and sale. They were not fictitious but real transactions.

"Q. Now, in speaking of spreads, suppose a man goes to a Carrollton customer and buys 10,000 bushels of Chicago May wheat and at the same time sells an equal amount of Winnipeg wheat for future delivery, on the same month's delivery, what is the effect on the Chicago transaction of the Winnipeg transaction, so far as hedging is concerned?

A. One of them is a hedge against the other one.

Q. That is a typical hedge, is it not?

A. That would be, yes."

These confirmations sent from Kansas City to Carrollton customers were sent through the United States mail.

Recross-examination:

I presume that a hedge and a spread mean the same thing in the end, because if you buy something and hedge it by selling something else—. When you hedge the only loss that could be sustained would be through a reduction in the premium. I mean this. If you had cash wheat bought, and say you paid 6 over the option, and you sold your hedge against it to protect yourself from the fluctuation of the market, and you held this cash wheat, the wheat was then duly worth 2 cents over the option you have lost 4 cents a bushel in the premium. That would be the only loss it would be possible to sustain. If you bought today on the Chicago Board of Trade at a certain price and would hedge against it by buying on the Winnipeg market at the same amount and the market on one advances 10 cents and the other stands still, there would be a loss.

"Mr. S. J. Jones: Upon adjournment I thought there was some way to avoid the necessity of offering these various bills in evidence. I don't want to waive the objection I made to the introduction of evidence, but I will admit that these bills—I have forgotten what the exhibit was—if ad-
[fol. 72] mitted in evidence would prove the total of the amount sued on. The point I am making is simply this: It is not an itemized statement attached to the petition, and the point I want to make to the court is that the objection goes to the showing. I will withdraw the court with that understanding.

The Court: You challenge the correctness of the statements of debits and credits?

Mr. S. J. Jones: No, I don't challenge that. My challenge is that under the law it is not a sufficient itemized statement, and therefore, it not being a sufficient itemized statement, the petition falls. That is the legal point I raise. I don't think there has been any evidence offered—I think I objected to it—that the Chicago Board of Trade and Kansas City were contract markets. I will admit that both were contract markets, and so designated by the Secretary of Agriculture.

The Court: Not any admission with respect to Minneapolis and Winnipeg?

Mr. Stinson: Winnipeg would not. We have a certified copy of the opinions of the Secretary of Agriculture here.

Mr. S. J. Jones: I will admit that Minneapolis is so designated by the Secretary of Agriculture.

Mr. Stinson: We mean by that, during the period of time in controversy.

Mr. S. J. Jones: Yes, sir; I am sure that would be true, and I am going to admit it.

Now, with reference to blackboards, the admission, as I understood it, in that office they kept and maintained a blackboard on which was posted——

The Court: That is the office at Carrollton?

Mr. S. J. Jones: Yes, sir. Throughout the day the various changes of prices on the Board of Trade at Chicago, Kansas City, Minneapolis and Winnipeg, and that the markets, so posted relate to future deliver- market, the market, whatever you call it, like July, September and October grain, and that that blackboard was maintained there and those markets posted for the information of the customers of the Uhlmann Grain Company. I will make that statement.

Mr. Stinson: I don't know whether that is an admission or an assertion.

[fol. 73] The Court: You don't know whether you want to admit that, is that it?

Mr. Stinson: I think the plaintiff will answer Mr. Jones' admission, the admission that the quotation was posted on this blackboard in question during the period in question, reflected actual transactions.

Mr. S. J. Jones: We don't admit that.

The Court: You are not agreeing to that?

Mr. S. J. Jones: No, sir.

The Court: Of course, that may be disregarded. Of course, I don't know.

Mr. Stinson: Well, if the court please——

The Court: They are not asking for an admission of that sort.

Mr. Stinson: Well, we will supply—if that is not admitted we will supply it by proof. We are going to read Mr. McDonough's deposition.

The Court: I understand that limits the proof to the mere question of the contractual relations involved in these transactions, is that right?

Mr. Stinson: Yes, your honor.

The Court: As I understand, these objections go to all the accounts here, qualified, as you stated there, with respect to the admission?

Mr. Stinson: Yes, sir.

The Court: So it will not be necessary for you to go through the ledger for any account sued on and offer in evidence the ledger account.

Mr. S. J. Jones: No, sir.

The Court: I think that is very good. I think it will shorten the case and at the same time preserve your rights."

RICHARD UHLMANN testified for plaintiff as follows:

Direct examination:

I live in Chicago, Illinois; am Secretary and Treasurer of Uhlmann Grain Company; my father's name is Fred Uhlmann, and he is President of the Company and one of its organizers. The principal place of business of Uhlmann [fol. 74] Grain Company is Chicago, Illinois, and it has a branch office in Kansas City. In 1924 Uhlmann Grain Company was a member of four exchanges, Chicago, Kansas City, Minneapolis, and Winnipeg. There may have been others.

I am familiar with the methods followed generally by members of the Chicago Board of Trade and by Uhlmann Grain Company in transactions similar to those in question in these cases. I know how the various orders which have

been testified about, which came to Chicago from Kansas City were executed. The orders were executed in this way; The order, as explained yesterday, which had originated in Carrollton was relayed at Kansas City and thence to Chicago. A typical telegram which I hold would be copied by a wire operator. I am referring to Exhibit 9. A telegram from Kansas City would be copied by a telegraph operator in Chicago by the Uhlmann Grain Company. There was a private wire leased by Uhlmann Grain Company between Kansas City and Chicago in 1924. In the absence of wire trouble, they would always come over this private wire. The order would be received in our Wire Department and after being written by the telegraph operator would be handed to a boy who sat just opposite; that order would be telephoned to the exchange floor to a man sitting there and representing us. He, in turn, would copy that order and would have a boy run that order into the pit, there to meet an executive member of our firm or one of our brokers. The broker would make every effort to make this purchase at the bid price or from the cheapest seller. I, myself, a part of my duties are in the pit engaged in buying and selling these futures. If I succeeded in finding a seller at the price, I would merely write down the party from whom purchased in hieroglyphics or otherwise, and make a notation on the top of the house represented by the broker, the broker's name, so in the event of a dispute the trade could be fully traced. In the event it was a purchase, it would be jotted down on the original order. The order would be sent back to our telephone man on the exchange floor, and, in turn, would be routed back over the wire. After the transaction is consummated in the pit, a confirmation is exchanged between the brokers by our clerical force upstairs. Where a purchase and sale is executed on the Board of Trade, Exhibits 14 and 15 are typical of the records that are made by the contracting brokers of the transaction. They are a confirmation. On the Chicago Board of Trade Uhlmann Grain Company never deals in the purchase and sale of these commodities with anyone but a [fol. 75] member of the above Board. Uhlmann Grain Company was not a clearing member at Minneapolis or Winnipeg. These transactions are always actually executed by clearing members of the particular exchange. Where a transaction is to be executed in Minneapolis or Winnipeg, we simply wire

those orders to one of our correspondents in the market concerned. The correspondent would always be a clearing member of the exchange. And under the custom and practice of those exchanges, he would always deal with a clearing member. Immediately upon consummation of the trade we would receive telegraphic instructions stating the amount or price at which bought or sold and the following day when the mail would arrive we would receive a written confirmation. The first confirmation would be telegraphic and the day's mail would give the balance. Such a confirmation is plaintiff's Exhibit 16. I do not have a typical telegram which is an order on the broker in Winnipeg. We don't keep records of that because within 30 or 60 seconds we get a reply.

(Plaintiff offers Exhibit 16 in evidence. Defendants' counsel object to this offer upon the ground that there is no showing that the defendants or either of them was in any way connected with it; it does not prove or tend to prove any issue in the case as against the defendants, and is wholly irrelevant. The objection was overruled, defendants excepting at the time.

Defendants also object to Exhibits 14 and 15 of plaintiff, for the reason that it has not been shown that defendants were in any way connected with the transaction there mentioned and listed and referred to, and that they are not binding on defendants in any way. The objections were overruled, defendants excepting.

In connection with defendants' objections to the offer of these Exhibits 14, 15 and 16, the following occurred:

"The Court: In other words, you don't object to it on the grounds that such documents were not made up in connection with the transactions had with the defendants, but you say that the defendants had no knowledge of it and they are not connected with it, with the immediate transaction?

Mr. S. J. Jones: That is right. That is the objection.

The Court: Well, the objection will be overruled upon your theory here.

Mr. S. J. Jones: Exception."

[fol. 76] At the bottom of Exhibit 14 is the name, "P. B. Carey." P. B. Carey was a clearing member of the Chicago Board of Trade. He was on the opposite side of the transac-

tion with the Uhlmann Grain Company in the transaction respecting which this card is made. On the bottom of Exhibit 15 is the name, "Edward H. Bagley." He also was on the opposite side. Now these cards are made out by Bagley and Carey where they are on opposite sides in the deal in the pit with the Uhlmann Grain Company, and the Uhlmann Grain Company likewise makes out and delivers to them the same thing.)

Plaintiff's Exhibit 14 is as follows:

PLAINTIFF'S EXHIBIT 14

"Chicago, Nov. 15, 1924.

I hereby confirm Purchases made by me today under the rules of the Chicago Board of Trade, as follows, of

Amount	Delivery	Uhlmann Kind of property	Price
5	D.	.....	153¼

P. B. Carey. Phones: Harrison 0290-0291."

Plaintiff's Exhibit 15 is of the same general character as Plaintiff's Exhibit 14.

Plaintiff's Exhibit 16 is a Western Union telegram, dated August 19, 1924, containing this language:

PLAINTIFF'S EXHIBIT 16

"Received at Chicago Board of Trade Office—Uhlmann Sold 10 Oct. Wht. 37¾ (Signed) Seaboard. 938 A "Gd" Winnipeg, Man.—Standard Time."

These confirmations mean: The figure 5 represents 5,000 bushels; the delivery D represents December; and the price, $1.53¼. On the sales confirmation, that is 5,000 bushels of December wheat sold at $1.25⅜. I am reading Exhibits 14 and 15. Assuming that these orders began in Carrollton, immediately the Kansas City office would be notified the purchase and sale price, and they, in turn, would relay that to Carrollton. Directing attention to Exhibits 9, if a ring or parenthesis goes around this order, being a sale order, that means that the operator in Chicago has reported the transaction to Kansas City. In reporting a transaction to Kan-

sas City where the order is executed on the Chicago Board of [fol. 77] Trade, Kansas City is notified of the name of the person who is on the other side of the transaction by written confirmation, but not by telegram. A typical written confirmation of this character is plaintiff's Exhibit 17.

(Plaintiff offers Exhibit 17 in evidence. Defendants object to it for the reason defendants are not shown to be connected with the transaction. The objection was overruled, defendants excepting.)

Plaintiff's Exhibit 17 is in words and figures as follows:

PLAINTIFF'S EXHIBIT 17

"Uhlmann Grain Co., Elevator-Commission-Export. 98.
"Board of Trade Bldg., Chicago, 5/17/28.
"R. Special.

"Uhlmann Grain Co.:

"We hereby confirm the following purchases made by us for your account and risk, subject to the rules and customs of the Chicago Board of Trade.

"Bushels, 10,000; Description, Sept. Wheat; Bought of J. Barrett; Price, 148⅜.

"Bushels, 5,000; Description, July Wheat; Bought of Bittell; Price, 148¾.

"We reserve the right to close all contracts without further notice whenever in our judgment the security in our possession has become inadequate.

"Yours very truly, Uhlmann Grain Co., per ——
——."

Exhibit 17 is typical of what would be sent by the Uhlmann Grain Company in Chicago to Kansas City, and it would show the number of bushels, the description, the delivery, and the price and the party with whom the contract was made?

Assuming that the transaction was closed in Winnipeg or Minneapolis, the confirmation from our broker there would show the other parties to the contract; but that information would not be relayed from Chicago to Kansas City. It would remain in Chicago. The difference is this: In Chicago transactions Uhlmann Grain Company at

Chicago would relay the name of the other party to the contract to Kansas City as well as keep a record of it there. In the Minneapolis transaction, in the Winnipeg transaction, the name of the other party to the contract [fol. 78] would be sent to Chicago, a record made of it there, but there would be no transmission back to Kansas City of these transactions. The reason Uhlmann Grain Company would employ a broker to represent it in Winnipeg and Minneapolis is that it was not at that time a clearing member of these exchanges.

In none of the transactions with these defendants did Uhlmann Grain Company act in any other way than shown by these written records.

(Defendants' counsel moved that this answer be stricken out for the reason that there is no record showing how they did it. Objection overruled.)

PLAINTIFF'S EXHIBITS 18, 19, AND 20

Plaintiff's Exhibits 18, 19 and 20 are the rules and by-laws of the Chicago, Minneapolis, and Winnipeg Grain Exchanges in force in the year 1924.

"Mr. Stinson: Plaintiff desires to make a general offer of these three rules books with the understanding that there shall be furnished only the sections that are pertinent asked for by either or both sides. In other words, I don't want to have to print the whole record and the other side will have the privilege of reading those sections."

In the Chicago rules, in Section 2 of Rule 23, reading as follows:

"In case any property contracted for future delivery is not received and paid for when properly tendered it shall be the duty of seller in order to establish any claim on the purchaser to sell it on the market at any time during the next 24 hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale, and any loss resulting to the seller shall be paid by the party in default."

I know the rule which denies to a broker the right to take the other end of a transaction or trade with his customer, and denies to the broker the right to act as principal and

agent, or as agent for both parties to the transaction. I have that written on the back of the Winnipeg—showing the page number there. That would fall under Rule 4, Section 11, which reads as follows:

"No member of this association is allowed under any circumstances to be both principal and agent in any transaction in any of the commodities dealt in under the rules of the Board. Furthermore, no member of this association [fol. 79] in any transaction in any of the commodities dealt in under the rules of this Board shall allow himself directly or indirectly, either by his own act or acts of an employee or broker or other member of the association to be placed in the position of agent for both seller and buyer."

The other pertinent rules of these Exchanges in force at the time are as follows:

Chicago Board of Trade

Sec. 8. (Para. 2). "All orders received by any member of this Association, firm or corporation doing business upon the Board of Trade of the City of Chicago, to buy or sell for future delivery any of the articles or commodities dealt in upon the floor of the Exchange (except when in exchange for cash property) must be executed in the open market in the Exchange Hall during the hours of regular trading, and under no circumstances shall any member, firm or corporation assume to have executed any of such orders or any portion thereof by taking the trades, or any portion of any of them, for their own account, either directly or indirectly, in their own name or that of an employe, broker or other member of the Association. Any member convicted of violation of this rule by the Board of Directors shall be expelled."

Sec. 11. "No member of this Association is allowed under any circumstances to be both principal and agent in any transaction in any of the commodities dealt in under the rules of this Board. Furthermore, no member of this Association in any transaction in any of the commodities dealt in under the rules of this Board shall allow himself directly or indirectly, either by his own act or by the act of an employe or of a broker or other member of the Associa-

tion, to be placed in the position of agent for both seller and buyer."

Sec. 8. (Para. 1). "Any member of the Association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity or corporate stock—without a bona fide purchase and sale of the article for an actual delivery; or who shall be a member of, or shall, in his own behalf, or as [fol. 80] agent, directly or indirectly make, execute, or give any orders for a trade or transaction in or upon any bucket-shop or any so-called exchange, wherein is conducted or permitted the business aforesaid, or who shall knowingly accept, either directly or indirectly, from any member of any so-called exchange, wherein is conducted or permitted the business aforesaid, any orders for trades or transactions to be executed in the Exchange Hall of this Association, shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Association; and upon complaint to and conviction thereof by the Board of Directors, he shall be expelled from membership in the Association."

Rule XXII, Sec. 2. "On contracts for property deliverable at the pleasure of the seller, within a specified time, the seller may deliver the property on any day during such time, between the hours of 8:30 and 9:15 A. M., or between the hours of 2:30 and 3:00 P. M. or 1:30 and 2:00 P. M. on the last business day of the delivery month, as provided by Section 2 of Rule XXI."

Rule XXII, Sec. 6. "In case it shall appear that the delivery of any outstanding trade or contract between members of the Association may be offset by some other corresponding trade or contract, made by the parties with other members of the Association, and the parties to such trade or contract, or their authorized agents, consent to such offset, such trade or contract shall be deemed to have been settled, and any balance between the current market value of the property covered by such trade or contract and the several contract prices, shall be due and payable imme-

diately by the party from whom such balance may be due to the party entitled to receive the same under his contract. * * * In order to facilitate the operation of this section, each member is required to keep a settlement book in which shall be entered the names of parties with whom settlements have been made, and the dates and terms of the trades included in such settlement, and the terms of such settlements, and the prices at which the commodities were originally sold or purchased, and the amounts due to or from him or them on each separate settlement, also the net amount due to or from him or them on all settlements."

[fol. 81] Sec. 12. "Whenever a member of the Association, acting on his own behalf or as the representative of a firm or corporation, shall have made a purchase or sale for another party for future delivery of contract grades of commodities dealt in on the Exchange, such member or the firm or corporation of which he is the representative, as the case may be, shall notify the party for whom such purchase or sale was made, of the price at which and the party with whom such purchase or sale was made, such notice to be in writing and to be given upon the day of such purchase or sale."

Rule XXIII. "Failure to Deliver or Receive on Contracts.—Section 1. In case any property contracted for future delivery is not delivered at maturity of contract, the President shall appoint a committee of three from the membership at large, to be approved by the Board of Directors, which Committee shall determine as nearly as possible the true commercial value of the commodity in question on the day of the maturity of the contract, and the price so established shall be the basis upon which settlement is made.

It shall be the duty of the Committee in determining the true commercial value of the commodity under this Rule, to ascertain its value in other established markets, or for manufacturing or consumptive purposes, in this country, together with such other facts as may justly enter into the determination of its value.

As liquidated damage the seller shall pay to the purchaser not less than one percent nor more than ten percent of the value of the commodity as established by the Committee; the percentage, within said limits, to be such as,

in the judgment of the Committee, may be just and equitable.

Settlement shall be made without delay, and the damage as determined under the provisions of this Section, shall be immediately due and payable.

This section shall not be construed as applying to any parties having the property both bought and sold, in all of which cases settlement shall be made on basis of prices established by the contracts in such instances.

Sec. 2. In case any property contracted for future delivery is not received and paid for when properly tendered, it shall be the duty of the seller, in order to establish any [fol. 82] claim on the purchaser, to sell it on the market at any time during the next twenty-four hours, at his discretion, after such default shall have been made, notifying the purchaser within one hour of such sale; and any loss resulting to the seller shall be paid by the party in default."

Rule XXIII A. "Sec. 1. Every member shall make, or file, such report, and keep such record of his transactions as he is required to make, file or keep, by sub-clause (b) of Section 5 of the Act of Congress known as the Grain Futures Act, and if he shall fail to do so he shall be suspended by the board of directors from all privilege of membership until he shall comply with the said provisions of said act."

(Counsel for plaintiff and defendant agree that the sections and paragraphs of the Chicago Board of Trade Rules offered by both sides are typical of the rules of the other two exchanges Minneapolis and Winnipeg.)

Plaintiff's Exhibits 21, 22, 23 and 24 are confirmations of trades that have originally been reported by telegraph from our correspondents at either Winnipeg or Minneapolis.

Plaintiff offers Exhibits 21 to 24, inclusive, in evidence.

During the year 1924, there was a representative or supervisor of the Federal Government and of the so-called Grain Futures Administration to which records were made from day to day of these transactions.

Defendants object to Exhibits 21 to 24 inclusive, on the ground that they do not show any connection whatever with the defendants or either of them, or the various transactions cited on the several Exhibits; on the further ground that they do not prove or disprove any issues in the case, and are wholly incompetent. The objections were overruled, defendants at the time excepting.

(Plaintiff's Exhibits 21 to 24, inclusive, are all typical. Exhibit 21, the first page thereof, is a confirmation by R. B. McClean Grain Co. Ltd., Grain Exchange, Winnipeg, Man.; plaintiff's Exhibit 22 is a confirmation by Seaboard Grain Company, Limited, Grain Exchange, Winnipeg, Man.; plaintiff's Exhibit 23 is the confirmation of Brown Grain Co., Commission Merchants, New Chamber of Commerce, Minneapolis, Minn.; plaintiff's Exhibit 24 is the confirmation of Cargill Commission Co., 1104 First National-Soo Line Bldg., Minneapolis. The first pages of each of these Exhibits is in words and figures as follows:)

6M—1/24

All Purchases and sales made by us for you are made in accordance with, and are subject to the rules, By-laws, regulations and customs of the Winnipeg Grain Exchange, and also those of the Winnipeg Grain and Produce Exchange Clearing Association.
This trade has been, or may be, cleared through the said Clearing Association, and on being so cleared we will be the only person to whom you can look for the carrying out of this trade.

OFFICE OF
R. B. McCLEAN GRAIN CO., LTD.
GRAIN EXCHANGE

Winnipeg, Man. Aug 27 192 4

To Hermann Fra Leon
Chic

We confirm the following transactions made for your account and risk today:

PURCHASES			SALES		
5	Oct Wht	126¼	5	Oct Wht	125¼
5	"	125¼			

Pltfs Ex. 21
OSH

PLAINTIFF'S EXHIBIT NO. 21
(First Page)

83-84

PLAINTIFF'S EXHIBIT NO. 22
(First Page)

SEABOARD GRAIN COMPANY, LIMITED
GRAIN EXCHANGE

Nº 454

To The Ishbran Grain Co Winnipeg, Man. Aug 21 1924

87 Board of Trade Chg

In Compliance with your instructions, we have this day for your account and risk:

BOUGHT					SOLD				
AMOUNT	DELIVERY	ARTICLE	PRICE	FIRM NAME	AMOUNT	DELIVERY	ARTICLE	PRICE	FIRM NAME
					25.000	Oct	Wht	136 5/8	10 Alb Pac 15 Land
					5.000	"	"	136 1/2	A. Jr
					10.000	"	"	136 7/8	5 Sell 5 K BS
					10.000	"	"	137	5 alb Pac 5 2.0.
					20.000	Dec	Oats	57 7/8	10 McL 10 Can adl
					10.000	"	"	57 5/8 - 3/4	5 A B 5 Can adl
					20.000	"	"	57 5/8	A Banff
					10.000	Oct	Wht	135 5/8 - 3/4	5 Hud 5 Land

Pltff's Ex. 22
OBM

IT IS AGREED BETWEEN BROKER AND CUSTOMER:

1. That all orders for the purchase or sale of any commodities are received and executed with the distinct understanding that actual delivery is contemplated, subject to the rules, regulations and customs of the Exchange or Market where the trades are made and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto.
2. We also reserve the privilege of substituting other responsible parties as principals with you at any time in accordance with the rules of the Exchange where the trades are made, and to clear all transactions, through Clearing Associations, if there be any from day to day, in accordance with the usage prevailing at that time.
3. We reserve the right to close out at our discretion time contracts made for your account without further notice when margins are exhausted or so nearly so in our judgment, as to endanger the account, and to settle contracts in accordance with the rules and customs of the Exchange or Market where the order is executed.

E. & O. E.

SEABOARD GRAIN COMPANY LIMITED

PLAINTIFF'S EXHIBIT NO. 23
(First Page)

BROWN GRAIN CO.

COMMISSION MERCHANTS
NEW CHAMBER OF COMMERCE

Minneapolis, Minn., 6-20 1924

Johnson Grain Co

We have the pleasure of confirming the following transactions made for your account and risk today Duluth market:

QUANTITY	BOUGHT OF		ARTICLE	PRICE	QUANTITY	SOLD TO		ARTICLE	PRICE
5	Ashes	917	Dec wht	129 4	10	McCaull		Dec wht	129 5/8
5	Gregory	—	"	—	20	Ashes		"	128 3/4
5	Bartlett	918	"	"	10	Howard	801	"	128 7/8
5	Howard	—	"	"	20	Stevenson	910	"	129 1/2
15	Van Dusen	850	"	128 3/8	5	Eckwood	931	"	129
5	Ashes	846	"	128 3/8	2	Howard	936	"	129 3/8
5	—	—	"	129	5	Hopewood	911	"	129
10	Howard	—	"	—	15	Eckwood	1000	"	128 1/2
5	Johnson	850	"	—	15	Stevenson	1007	"	128 3/8
5	Ashes	—	"	—					
10	Elwood		"	128 3/8		Pfffe 23			
10	Lamm	803	"	129		1,004			
25	Howard	904	"	129 3/8					

"It is understood that all transactions made by us for your account contemplate actual receipt and delivery of the property and payment therefor, and that all property sold for your account is sold upon the representation that you have same in your possession, actually or potentially. These transactions are made subject to the rules and customs of the exchange on which they are made, and the right is reserved by us to close transactions without further notice if margins on deposit with us are exhausted, or are inadequate in our judgment to protect us against fluctuations."

BROWN GRAIN CO.

Per

PLAINTIFF'S EXHIBIT NO. 24
(First Page)

It is understood that all transactions made by us for your account contemplate actual receipt and delivery of the property and payment therefor, and that all property sold for your account is sold upon the representation that you have same in your possession actually or potentially. These transactions are made subject to the rules and customs of the Exchange on which they are made, and the right is reserved by us to close transactions without further notice if margins on deposit with us are exhausted or are inadequate in our judgment to protect us against fluctuations.

CARGILL COMMISSION CO.

1104 FIRST NATIONAL-SOO LINE BLDG.

MINNEAPOLIS, 8-21-24

Uhlmann Grain Co
Chgo

WE HAVE THIS DAY MADE THE FOLLOWING TRANSACTIONS FOR YOUR ACCOUNT AND RISK: E. & O. E.

BOUGHT						SOLD						
QUANTITY	MARKET	DELIVERY	COMMODITY	PRICE	OF WHOM	QUANTITY	MARKET	DELIVERY	COMMODITY	PRICE	TO WHOM	TIME
M					✓	10M	Mpls	DD	wht	134 3/8	LVCCo	9:45
"					✓	10"	—	—	—	134 3/8	Greg	
"					✓	5"	—	—	—	134 3/8	Wilson	
"						5"	—	ND	—	134 3/8	Loh	
"						5"	—	—	—	134 3/4	—	
"						"			✓			
"						"						
"						"						
"						"						
"	Pffs Ex. 24					"						
"			EEM			"						

[fols. 91 & 92] These Exhibits 21 to 24 are some records in the year 1924 which I have showing from whom purchased or to whom sold, the other brokers contracting in that market. They show the price, delivery, and person to whom sold; also the quantity. When I say "person to whom sold or from whom bought," I mean the other party to the transaction on the Exchange.

Plaintiff's Exhibits 25 and 26 are reports we were required to make to the United States Department of Agriculture showing each commodity dealt in, and the net quantity under or short. These are actual reports made by Uhlmann Grain Company to the Grain Futures Administration during the year 1924. They were made out on forms prescribed by the Grain Futures Administration, and I see a notation here that the grain exchange supervisor had sanctioned them.

(Plaintiff offers in evidence plaintiff's Exhibits 25 and 26. Defendants object on the ground that defendants are in no way connected with them, that they are not binding upon defendants as far as the issues in this case are concerned, and that there are no facts or figures cited in them that there was any knowledge on the part of the defendants. The objection was overruled by the Court, defendants at the time excepting.)

Plaintiff's Exhibits 25 and 26 are in words and figures as follows:

Form 101-G. F. A.

UNITED STATES DEPARTMENT OF AGRICULTURE

GRAIN FUTURES ADMINISTRATION

717 POSTAL TELEGRAPH BUILDING, CHICAGO

Harrison 4500

189

REPORT OF Uhlmann Grain Co (Name or number) FOR Dec. 1, 1924 (Date)

BOARD OF TRADE OF THE CITY OF CHICAGO

GRAIN	DELIVERY MONTH	AGGREGATE OF ALL "LONG" AND OF ALL "SHORT" OPEN ACCOUNTS: AGGREGATE LONG	AGGREGATE SHORT		
WHEAT	MAY	719	6262		
	JULY	633	65		
	SEPT.	0	0		
	DEC.	335	373		
CORN	MAY	270	539		
	JULY	57	210		
	SEPT.	0	0		
	DEC.	54	121		
OATS	MAY	60	10		
	JULY	2	0		
	SEPT.	0	0		
	DEC.	25	20		
RYE	MAY	88	202		
	JULY	45	0		
	SEPT.	0	0		
	DEC.	0	2		
BARLEY	MAY				
	JULY				
	SEPT.				
	DEC.				

NET POSITION OF ACCOUNTS DESIGNATED UNDER SEC. 2, PAR. "f" OF REGULATIONS

ACCOUNT (NUMBER OR LETTER)	LONG	DELIVERY MONTH AND GRAIN	SHORT

I hereby certify that this report is a true statement of the transactions and positions in futures on this exchange for the Uhlmann Grain Co. as of the close of business Dec. 1st 1924 - as shown by records in this office.

By Ellis Fitz
Grain Statistician

REMARKS:

PLAINTIFF'S EXHIBIT NO. 25

95-96

Form 101-G. F. A.

UNITED STATES DEPARTMENT OF AGRICULTURE

190

GRAIN FUTURES ADMINISTRATION

717 POSTAL TELEGRAPH BUILDING, CHICAGO

Harrison 4588

REPORT OF #753 (Name or number) FOR 3-31-27 (Date)

BOARD OF TRADE OF THE CITY OF CHICAGO

GRAIN	DELIVERY MONTH	AGGREGATE OF ALL "LONG" AND OF ALL "SHORT" OPEN ACCOUNTS — AGGREGATE LONG	AGGREGATE SHORT	NET POSITION OF ACCOUNTS DESIGNATED UNDER SEC. 2, PAR. "f" OF REGULATIONS — ACCOUNT (NUMBER OR LETTER)	LONG	DELIVERY MONTH AND GRAIN	SHORT
WHEAT	MAY	1035	2787				
	JULY	1376	700				
	SEPT.	1349	170				
	DEC.						
CORN	MAY	517	106				
	JULY	64	1185				
	SEPT.	184	130				
	DEC.						
OATS	MAY	599	577				
	JULY	114	345				
	SEPT.	80	230				
	DEC.						
RYE	MAY	493	86				
	JULY	48	45				
	SEPT.	61	41				
	DEC.						
BARLEY	MAY						
	JULY						
	SEPT.						
	DEC.						

REMARKS:

PLAINTIFF'S EXHIBIT NO. 26

[fol. 97] These reports are typical of daily reports that were made by the Uhlmann Grain Company to the Grain Futures Administration in Chicago during that year, 1924. These transactions executed in Chicago for these defendants, are included in the transactions in the report. The same practice is followed in Minneapolis.

Exhibit 27 is a telegram which I got this morning signed by the Secretary of the Chicago Board of Trade. It is an answer to one which I sent.

(Plaintiff offers its Exhibit 27 in evidence. No objection.)

Said Exhibit is in words and figures as follows:

PLAINTIFF'S EXHIBIT 27

"Chicago, May 21, 1928.

R. F. Uhlmann, Kansas City, Missouri.

We advised Uhlmann Grain Company under date February sixteenth nineteen hundred twenty four Stop We have this day transferred the name of E. S. McDonough registered solicitor for M. L. Vehon and Company on our records as a solicitor in your employ signed membership committee. Stop McDonough's address that time was Florence Hotel, Carrollton, Missouri.

Fred H. Clutton, Secretary, Chicago Board of Trade."

There is a rule of the Chicago Board of Trade with reference to employees and solicitors of members. It is Rule 4, Section 33, and it states:

OFFER IN EVIDENCE

"The employment by members of all persons soliciting orders for the purchase or sale of property for future delivery upon this Exchange, or for the purchase or sale of property to be shipped to this market or for the consignment of property to this market for the purpose of sale, or, for the disposition in any manner of property dealt in upon this Exchange, shall be in accordance with regulations established and promulgated by the Board of Directors. All persons soliciting the business above described shall be divided into

two classes, first, 'Solicitors,' second, 'Brokers.' Solicitors, whether members of this Association or not, shall include all persons who give their entire time and services to one employer at a fixed salary. A broker under this rule——"

Mr. McDonough gave his entire time to Uhlmann Grain Company and was approved.

In the year 1924, Uhlmann Grain Company paid the Chicago Board of Trade for the privilege of relaying to Car- [fol. 98] rollton the quotations that were put on the blackboard in Carrollton. To my knowledge they paid the Chicago Board of Trade and possibly other grain exchanges. They paid $7.50 a month for the privilege of using Board of Trade quotations. These transactions get on the blackboard in the ordinary course of business in this manner. They were merely telegraphed over the ticker which had been installed in our wire room at Kansas City, and each quotation showed the last trade in the commodity dealt in in the pit.

Grain Clearing Corporation in Chicago operated in 1924 in this manner: After the transaction had been made in the pit, the purchaser had confirmed to the seller, and the seller to the purchaser in accordance with the card we have submitted, then we entered the transaction on our ledger and we showed to the clearing house at that time just exactly what price which we had sold the commodity at, and the price we had purchased. This record is typical. I am referring to plaintiff's Exhibit 28. Exhibit 28 is our own record, showing the broker who had made the transaction, and he has designated here the party from whom bought or to whom sold, the price at which the transaction had been made, also the war tax, and the number of the customer, i. e., the number of our own customer. The report would not give the number of the other man's customer. It gives the date. This is simply another record made by the Uhlmann Grain Company of those transactions executed on the Chicago Board of Trade for our customer. The records of the Carrollton customer for whom trades were executed on the Chicago Board of Trade would not be made here directly. It would be made for the Uhlmann Grain Company at Kansas City, which, in turn, marked it for the customer. The record in Chicago would merely designate

Kansas City by its own number, and Kansas City would keep the individual record.

(Plaintiff offers its Exhibit 28 in evidence. Defendants make same objection, objection was overruled, defendants at the time excepting.

PLAINTIFF'S EXHIBIT 28

Plaintiff's Exhibit 28 is a large sheet. It is headed Uhlmann Grain Company, 87 Board of Trade Building. No. 212 Sales of 5,000 bushels. Contract Wheat for Dec. 1924 delivery.

"The contracts here recorded were made on the Chicago Board of Trade. The address of contracting parties, Chicago.

[fol. 99]

Date	Name of broker	To whom sold	Acc't ren'd	Price	Tax paid	Cus.	Ring No.	Date
11-14 1924	15	Newman	773	155¾	78	73	10	11-19-1924"

The entry above designated is typical of fifty recorded on the sheet on November 14, 1924, and November 15, 1924. The opposite side of the sheet contains the following:

Uhlmann Grain Company, 87 Board of Trade Building. No. 213

Purchases of 5,000 bushels Contract Wheat for Dec., 1924, Delivery

"The contracts here recorded were made on the Chicago Board of Trade. The address of contracting parties, Chicago."

A typical item or entry is as follows:

Date	Name of broker	From whom bought	Acc't ren'd	Price	Tax paid	Cus.	Ring No.	Date
11-18 1924	36	Lewis	906	152⅝	....	325	8	11-19-1924

In 1924 the Clearing House did not start to function until the trade was closed. In other words, each individual trade was directed by the broker and he had the right to call us and we had the right to call him for ten per cent of

the margin equivalent, ten per cent of the commodity price. In other words, if wheat were $1.50 at that time, the broker who we had at that time would call us 15 cents per bushel until such time as the trade was closed. During this year, if Uhlmann Grain Company was indebted to a broker with whom it dealt, we would make a notation of our closeouts. We would then make a check to the clearing house for the amount of the loss sustained and after the market difference had been settled, whatever we had up with the broker would be collected. In 1924 the rule was a little different than it is now. Wherever at the close of a business day we owed the broker with whom we dealt, why, we would put up a margin with some bank and that slip would be delivered to the broker and that transaction closed. If we owed that broker money, we would pay the clearing house and the clearing house would, in turn, pay the broker and then we took our margin down. At the present time we deal with the clearing house as they do in Kansas City. These transactions were all executed in our own name; and we were behind them and put up the margin wherever necessary to [fol. 100] protect the transaction. When orders were executed in outside markets it was generally customary for us to leave a reasonable balance, or if the trades went against us, they were in the habit of calling us anywhere from 1 to 4 or 5 cents per bushel to protect those trades. In other words, we put up our margin with our own broker there. This is the method by which all of these transactions were carried out.

(Counsel for plaintiff agreed that it may be understood that counsel for defendants is objecting to this line of testimony and excepting to its admission in evidence by the Court. In connection with the objection of defendants, the following occurred:

"The Court: Gentlemen, you are getting right back to the very place I have been trying to get away from all the time. If we have to go back over all this individual proof, I understood that was all waived.

Mr. S. J. Jones: Yes, your Honor, that is all waived.")

In all of these transactions, everyone of them included in these five lawsuits, there is nothing in any of these items for

which recovery is sought by the Uhlmann Grain Company which represents anything other than advances made by the Uhlmann Grain Company in these transactions. The Uhlmann Grain Company is out of pocket all of the money we are attempting to recover here except the commissions.

Cross-examination:

When I said the other broker had a right to call on us for ten per cent, I meant that if during the day's transactions we had sold 10,000 bushels of wheat at $1.50, and the market, assuming it had advanced 5 cents to $1.55, it would incur a $500.00 loss, and they would have collected in addition to the actual loss an amount 15 cents over and above that price, by virtue of a rule of the Board of Trade.

Now that would be a deal between brokers, we at one end and another broker at the other.

"Q. And in that transaction, these defendants had no connection whatever, did they?

* * * * * * *

A. I would say they had very much connection. We might have been obligated to put up a sum of money to protect that trade, which if the trade had been made we would not have laid out."

[fol. 101] These are transactions between us in behalf of our clients.

"But the name of that client was not disclosed, was it?

* * * * * * *

A. We generally knew who this customer was. We had the account number in each case on the order. We generally required a margin of our customer. There were times when we did not. That was generally at the disposal of our Kansas City office. If they thought a person's credit was sufficiently good or that he may have been trading in small quantities where the money could easily have been obtained, we waived it. The same was true of Carrollton.

Q. Mr. McDonough had that authority, didn't he?

A. I don't believe, entirely."

Mr. McDonough was the representative of the plaintiff at Carrollton. He was put there primarily to represent us; and he did represent us for six or eight months; and it came within his line of authority to solicit business for us; and he did that. I am not qualified to say whether he required margins in all cases. I think in most instances he did; in a great many instances. I am not qualified to say what margins were required of our customers at Carrollton. I would imagine anywhere from 2 to 5 cents per bushel on wheat. If the market went against us in those instances, the broker we had bought from or sold to had a right to call on us for 10 or 15 cents per bushel. And we put that up.

"Q. So you were dealing in margins between each other?
A. We didn't consider it dealing in margins. We were simply dealing in grain and protecting each other.
Q. That is right. And that was the constant practice at that time, wasn't it?
A. In a general way."

Referring to the Exhibit identified by me, no name of any of these defendants is mentioned on any of them. We simply gave them as typical examples. It would have involved a great deal more work to get just those transactions simply giving the name of the Carrollton people. These records of 1924 are all intact and it probably would have been four or five days' work digging in a vault to identify each order with an individual and our ledger shows that clearly.

"Q. But if you had gotten those, they would have been like these, they would not have been connected?
A. Yes, sir.
Q. And that is absolutely true?
A. Yes, sir.
[fol. 102] Q. And the records so far as you have been shown so far fail to connect the name of a single one of these defendants with a single transaction?
A. Not exactly the name."

I am familiar with the office at Carrollton in a general way. There were no other towns like Carrollton in which we had offices.

In these orders telegraphed to Kansas City and relayed to Chicago, some of these men may have obligated themselves to sell 50,000 bushels of wheat at one time; I don't think it was the general practice. I could not state whether or not any of them contracted to sell that much, or whether they were in any way qualified. I was one of the directing heads of the plaintiff in Chicago. I went into the pit and carried on some of these transactions. I did not inquire to find out whether the men who sold 50,000 bushels of wheat had it to sell; that was not under my jurisdiction; I was selling orders. I knew some of the businesses of those for whom I was dealing. I did not personally make any inquiry to find out about their financial ability to make their transactions good; our firm did. As to these defendants, one of our executive members, Mr. Paul Uhlmann, our Vice President, inquired through the bank. I know this only from hearsay. He has always been truthful with me.

In our dealings with our Carrollton customers, they knew that they would obligate themselves in the event of a loss; we called on these Carrollton people to put up margins when they lost. This they did in some instances. We ascertain what was coming to them when we made settlement with them by the difference between the credits and debits. Their profit or loss was ascertained by the difference in market at the time of closing each trade, that is, the difference between the market as it was at the time the contract was made and what it was sold out at. In regard to that provision in these Exhibits offered in evidence that we reserve the right to close out those trades when margins run low, we exercise that right, and we ourselves determine whether or not we will close out the transaction. We give our customer a notice of it in those instances. We have given those people every opportunity, and I will say that our close-outs have been only in a minority of instances. The statement on these bills that we reserve the right to close them out without notice is a legal formality.

An "offer" is the new name for what used to be termed a "call". Bids and offers fell in the classification of privi- [fol. 103] leges. I will say it is one of the oldest functions of a futures market. It is nothing more or less than an insurance plan. The privileges can be either bought or sold. The farmer very often will make up his mind if wheat goes to $1.50 he will sell, and he might sell for two months at that

figure, and assuming his crop will be 10,000 bushels he clears $10.00 each day until that wheat is sold and when it reaches $1.50 he automatically becomes a seller.

I might even amplify that by saying that my father instituted and introduced privileges on the Exchange 50 years ago in Brussels, and it is used in a number of commodity and future exchanges now, and was reintroduced on the Chicago Board of Trade to eliminate speculation. This was done under sanction of the Government, and the stipulation appears which was broken down by the Government under the Capper-Tincher Law.

On one of these Exhibits where the item "30 offers" opposite which are the figures $27.28 in one case, and $27.26 in another, and $27.27 in another, they mean this: That the customer in each instance had sold 30 offers; these were daily offers and the customer was remunerated to the extent of $27.27. The remuneration came from the buyer. The buyer was some person in the pit, the same as any other buyer. Very often grain was delivered on those orders; but I could not tell whether any was delivered in this case. I will say this: That if offers were sold there was a pending option which might very often be sold. Those were probably in futures. After this item of 30 offers, the seller would be liable to sell at the price at which he had contracted 30,000 bushels of futures. I mean by that that 30,000 bushels could be called for at that price. Those offers are generally dealt in at a figure anywhere from a cent and a half to five cents above the closing price of the previous day. One offer means a thousand bushels. In an offer the buyer of the contract has the option of calling at his discretion, if the price has been reached, and it is likewise the practice of people who sell offers, assuming, for instance, that a man would be the owner of 10,000 bushels of May wheat at 50 cents, he would sell offers for 53 and on the following day he would receive remuneration for insuring the buyer, and if the price of $1.53 were reached he would become a seller.

If I were given 30 offers, that would be 30,000 bushels of wheat. If I were a buyer the advantage which could accrue would be this: I might want to offer grain through the night on the basis of today's market, and I might not [fol. 104] get my reply until two hours after the opening. I would get the market for the entire day to base my trans-

action on, and if the market should go above that level for a time I could still book the sale. It is used that way for the same purpose where we are buyers or sellers as the case may be. If I have been given an offer today, we will say, that would mean I would sell 30,000 bushels of wheat on tomorrow's market if I demanded it. And whether I demanded it or not would probably depend on which way the market went. If it went up I would want it. If it went down I might not want it, but I might. I might buy a larger quantity of offers than I felt wheat could be bought in at the pit, and I might even take those offers if they were half a cent below closing price simply as a precaution to myself. I might be willing to stand a half-cent loss simply to get a larger quantity than I thought could be traded in the last moment on the Exchange which would be a trading benefit to you as well as to myself.

"Q. Then it all depends on the turn of the market, doesn't it?

A. Mostly, yes."

We have a vast number of customers over the country. We probably have 400 or 500 active accounts. They are scattered all over the grain territory; and abroad, and they are people in all walks of life, I presume. We publish daily a grain letter which appears in the Journal of Commerce and the Journal of Commerce, I presume, is a fairly large publication, and a great many people are apt to read it. We very seldom write letters, but occasionally we do. In these letters we might advise our customers about trading. We sometimes suggest that they lay off in July, for instance, and get on in September. We do it for this reason. In this business you can only keep your hedging trade or other customers if you try to be honest with them and give them the best advice at your disposal. The ultimate scheme of the advice is to make money out of it for our customers. And we advise them which market we think will advance the most if they are on that side. We try not to take stands; we are as impartial as we can be. We try to simply state facts. And it might be that we couple these facts with our advice and opinion. We give statistics and data and we might form a conclusion. In the grain area around Kansas City, Chicago and Minneapolis,

I would say we had possibly 300 customers. Among them many might be inactive customers. I mean by "inactive", for instance, Washburn-Crosby. For instance, if they would hedge in December, or assume they would pass there and wait until May to take delivery, they would be an inactive account. That would be margining their account un-
[fol. 105] til delivery. They are a milling firm. Customers like these defendants, I think that it was stated yesterday by Mr. Rowe, that there were about 50 at Carrollton. I think most of them were in Carrollton.

It is hard to state what percentage of grain contracted for is delivered. I can give you an example. This is May and I would say in Chicago 400 to 500 million bushels will be tendered of new grain and a great deal of that is redelivered. I could not approximate what percentage contracted for is delivered.

These people at Carrollton sold on three Broads of Trade through us, Chicago, Minneapolis and Winnipeg. I am not able to tell—the Exhibits will show—how much of that was dealt in at Chicago.

Referring to Exhibit 25 and directing attention to the column on the left under "September" the reason under the month of September there are no figures but ciphers, is that there are only, as a rule, two active trading months. May is now, and December has just been passed, and there might be days when we don't trade in a bushel. The trade is small but will grow as times of maturity approach. I mean by that as we draw near to the option month. December is a long ways off. We are trading now in July and September which are the two active months. Of all the grain dealt in by these defendants at Carrollton, not a bushel was ever delivered, I do not believe.

"Q. And all the settlements were made in the manner you have stated by taking the difference between the market price as contracted and at which it was closed out?
A. Yes, sir."

Redirect examination:

When these transactions were closed out, if it was an original purchase they would be closed out by a sale. When a transaction originated in a purchase, when that was sold later, closed out, the records were made in the same way

as a purchase was done. The market quotations would determine the price at which the commodity was purchased, and it would also determine the price at which it was sold.

"Q. There wouldn't be a settlement of difference on market quotations without an actual purchase and sale involved?

A. Never."

[fol. 106] Recross-examination:

I have a copy of the Kansas City Board of Trade rules.

(Here plaintiff offers in evidence copy of these rules. Said document was marked plaintiff's Exhibit 29.)

We buy grain from another broker. He is a broker that deals on the Exhange which we deal on. We do not inquire whether or not he has the wheat on hand. His principal puts up a margin. He might be acting for himself. So far as our dealings with the Carrollton office is concerned, I think in most cases the money required to be put up by defendants was to reimburse us for money we had previously paid out. When a man starts in, we would require a margin. Probably ten per cent, because you take the delivery and the bank would require that as collateral against the grain deal. I might make terms and ask less, but I would say that ultimately it would require ten per cent if you took a delivery of a commodity. That is what the banks require of us on grain collateral. The purpose of requiring our customers to pay 2½ cents per bushel is two-fold: It is a protection to us, and we want the margin to come to us the same as we pay them to others. One of the reasons might be that it protects us against fluctuations in the market. Other reasons are, I have tried to make it clear that we have to put up a certain amount with the other broker if we want to continue to do business. We can't finance the entire engagement on our own capital. We must get the money from our customers.

Witness excused.

("Mr. S. J. Jones: There seems to be a misunderstanding between counsel about that admission I made a little bit ago; that I was admitting all those were valid transactions.

The Court: I didn't so understand. What you did admit was that the transactions occurred so that there was an account credited, that is, a ledger account, but you challenge the validity of it.

Mr. S. J. Jones: That's right.

The Court: There is no admission of the validity.")

W. F. Logan testified in behalf of the plaintiff, as follows: I live in Kansas City. I am connected with the Grain Futures Administration of the Federal Government at [fol. 107] Kansas City. I am in charge of the Kansas City office. I work under the Department of Agriculture, Secretary of Agriculture. I am engaged in administering for the Government of the United States and the Secretary of Agriculture, the Grain Futures Act of 1922. In the year 1924 I was Assistant in a similar capacity in the City of Chicago. That is to say, in 1924 I was Assistant Supervisor of the Grain Futures Administration of the Government of the United States in connection with the activities of the Board of Trade of Chicago. I came to Kansas City as supervisor about January 1, 1925.

Plaintiff's Exhibit 30 is a copy of the general regulations promulgated by the Secretary of Agriculture with respect to contract markets, in force in the year 1924.

Said document was offered in evidence by plaintiff.

Objection by the defendants.

Objection overruled.

Defendants excepted.

In the year 1924 there were rules promulgated by the Secretary and printed in this book, having to do with the reports to be made by members of these contract markets and by the Grain Clearing Corporation. I will read from the rules on this subject:

Plaintiff's Exhibit 30

"A. (Reading:) Such report shall show separately for each kind of grain and each delivery month the following facts:

"(a) The net position at the beginning of the period covered by the report;

"(b) The quantity of grain purchased and the quantity of grain sold on such contract during the period covered by the report;

"(c) The quantity of grain delivered and the quantity of grain received on such contract during the period covered by the report;

"(d) The net position at the end of the period covered by the report;

"(e) The aggregate of all 'long' and the aggregate of all 'short' accounts carried at the end of the period covered by the report by the clearing member for whom the report is made; and

"(f) The net position, at the end of the period covered by the report, of each separate account carried by such clearing [fol. 108] member when such net position equals or exceeds such amount as shall be specified in a written notice from time to time by the Grain Futures Administration to such contract market.

"For the purposes of item (f) a distinguishing designation shall be used instead of the name of any person, but the name and address of such person shall be given upon request to a representative of the Grain Futures Administration authorized for the purpose by the officer in charge thereof. Such designation shall always be used for the same person and not for any other person and may be changed only by or with the approval of such representative."

In the year 1924 certain forms were given on the Chicago Board of Trade to its members. They were provided by the department for those members who were clearing members, and to the clearing house itself to be filled out by the members of the clearing house.

Plaintiff's Exhibits 25 and 26 are typical of the forms provided by our office to be filled out by the clearing members. Mr. L. A. Fitz is the grain supervisor in Chicago now. He held that office when I was his assistant in Chicago. These two reports, plaintiff's Exhibit 25 and 26, complied with our requirements at that time. In the year 1924 we did not require the member of the exchange making reports to show the name of its customer, unless the transaction exceeded

one-half million bushels. We received a report from Uhlmann Grain Company regularly in the year 1924. They were in good standing with the department; and they made the daily reports that were required by the Department of Agriculture. I am familiar with the general method of administrating the Grain Futures Act by supervisor, such as myself, in Minneapolis and other contract markets in the year 1924. The requirements of the department with reference to the reports and how *have* are to be made, are typical on the Chicago Board of Trade and were in 1924. There are just the same rules on each exchange.

(At this point counsel for defendants again admits that at the time, in 1924, the Chicago Board of Trade, the Minneapolis Chamber of Commerce, and the Kansas City Board of Trade, had been designated as contract markets by the Secretary of Agriculture.)

In 1924 in Chicago the department, whenever it saw fit, went into the books and examined the books of the clearing members of the Chicago Board of Trade. We had access to them and supervision over the inspection of them when- [fol. 109] ever we so desired. And we exercised that privilege on several occasions. Mr. Duvall is our chief in Washington. The Grain Futures Administration is in the habit of making annual reports.

Plaintiff's Exhibit 31 is an official copy of the report for the year 1924 of the Grain Futures Administration.

Our supervision, as we have exercised it in Chicago, is over transactions in grain futures on contract markets. We are acting only under the provisions of the Grain Futures Act of 1922. Our activities do not include an investigation of the character and standing of members of the exchanges. We admit the whole exchange as a contract market. But we do see to the enforcement of the Grain Futures Act and of the rules promulgated by the Department of Agriculture pursuant to it. In a general way, that is the scope of my duties. In 1924 I did not receive daily reports from the clearing house, just from the clearing members. The reports made by the Uhlmann Grain Company to me during the time I administered for the Government in Chicago and the Grain Futures Administration, complied, so far as I know, with those regulations of the Department of Agriculture.

Cross-examination:

The reports that were required under those rules did not disclose the name of the various customers, except when they exceeded 500,000 bushels in Chicago. I knew nothing specifically of the operations of Uhlmann Grain Company at Carrollton. In a general way I expect we are presumed to know how they carried on their business in Carrollton. We did not know personally of the transactions in Carrollton.

Redirect examination:

In these regulations at page 7, Section 8E, the Secretary of Agriculture has defined future deliveries. I will read the definition:

"A. (Reading:) 'Future delivery' does not include any sale of cash grain for deferred shipments or delivery."

That has been arbitrarily decided to mean any cash transaction for 20 days—beyond 20 days it is a future delivery, but the object in the Grain Futures Act was not to supervise or pay much attention to cash grain transactions 30 or 40 days or 60 days, and that was the idea when the Act was drawn, but someone decided afterwards 20 days was about the limit you could sell cash grain for and not call it a future delivery.

[fol. 110] The term "future delivery" has a general, common, and well understood meaning on these contract markets and in the grain business, and did in 1924. It is buying and selling grain for specified months delivery, maybe 6 or 7 months or maybe 2 or 3 months away. The principal months traded in are May, July, September, and December.

This language from a report of the Secretary of Agriculture, plaintiff's Exhibit 31:

PLAINTIFF'S EXHIBIT 31

"Transactions in grain futures in the sense in which these are referred to by the Grain Futures Act include primarily such contracts for the purchase or sale of grain for future delivery as are made in the open market on the floor of the exchange during the hours of regular trading, all of which are subject to the rules of the exchange."

coincides with my part of what futures are.

With this part of the report:

"Q. On the Chicago Board of Trade, for instance, all such contracts are 'subject to the rules of the Board of Trade of the City of Chicago and the regulations and requirements of its Board of Directors.' This circumstance has an important bearing on the matter of records, because under the rules of the exchanges the parties to every such contract must be members of the clearing association (or clearing house)."

coincides with my understanding of the rules.

This statement in the report is true:

"Q. Nonclearing members of the exchange may enter into such contract, but they are 'obliged to furnish forthwith the name of a clearing member who will accept and be liable for such contract.'"

They transacted business in Chicago at that time as shown by this language of the report:

"Q. Persons who are not members of the exchange must, of course, transmit their orders to some member for execution, and resulting transactions on the floor of the exchange must stand in the name of a clearing member."

That is true of all contract markets.

This language from the report is correct:

"Q. Speaking strictly, therefore, clearing members are the parties to these transactions on the exchange and they look for settlements to one another."

[fol. 111] That is the way they settled with each other daily.

This statement from the report is also correct:

"Q. Each clearing member then looks when necessary to his own customers, who are the persons for whom the transactions are made."

That is the way they transacted business there with their customers.

The daily reports that are made to the administration officer, the Grain Futures Administration, on contract markets in the year 1924 were reports of transaction by and between members had upon these exchanges. It did not include any report except when a special request or demand was made by the department of this fact, if it was a fact, on members at large.

(Here plaintiff's counsel offered in evidence that part of the report of the Grain Futures Administration to the Secretary of Agriculture for the year 1924, which was read and referred to by the witness. Defendants objected to the offer on the ground that it did not tend to prove any issue in the case. Objection overruled, defendants excepting at the time.)

Plaintiff offers in evidence the deposition of E. S. McDonough. Said witness deposed as follows:

I reside in New York City. I am New York manager for the Uhlmann Grain Company of Chicago. I have been such manager for three years. Before I came to New York I was in the employ of Uhlman Grain Company at Carrollton, Missouri. I was there about 13 months. Uhlmann Grain Company maintained an office at Carrollton. It was in the basement of the Flowers Hotel. I opened that office for the Uhlmann Grain Company. I was directed to do so by the Vice President, Paul Uhlmann, of Kansas City. He directed me to go to Carrollton to furnish up an office and open an office in the name of the Uhlman Grain Company as a branch of the Uhlmann Grain Company. In a general way Uhlmann Grain Company was engaged at the time in the transaction of grain futures on the various exchanges; Kansas City, Chicago, Minneapolis, Duluth, Winnipeg Grain Exchange and for the execution of orders given by the respective exchanges and also the solicitation of cash grain consignments, wheat, corn and oats, on the various markets. My connection at Carrollton was my first with the Uhlmann Grain Company. I was at Bloomington, [fol. 112] Illinois when I aligned myself with them in a business way. I came with them in this way; I had known the

President of the concern for many years, known of him, not intimately, when he was with the Rosenbaum Grain Company. I met Paul Uhlmann about 30 days before going to Carrollton for the first time. He did not go with me to Carrollton, I went alone. I made the arrangement with the proprietor of the Flowers Hotel for the office. I rented it from him. I installed a rolltop desk, chairs for the office, a blackboard, a desk for the telegraph instruments and typewriter. The office was then fitted with a telegraph instrument. The purpose of the telegraph instrument was that that was a private wire which we controlled, which we had leased from Carrollton to Kansas City from the A. T. & T. That means American Telephone and Telegraph Company. The Uhlmann Grain Company arranged the lease with them. I did not do it. I had the blackboard installed in the office. The purpose of the blackboard was to post quotations on grain, continuous quotations, which were transmitted to us over the private telegraph wire, from the various markets. These quotations came from Kansas City to us over this private wire, which represented actual transactions and bids and asked quotations on the various commodities which we posted from the various exchanges of the country. We posted the prices of wheat, corn, oats and rye. We posted quotations representing transactions on the Chicago Board of Trade, Kansas City Board of Trade, and posted wheat quotations representing transactions on the Winnipeg Grain Exchange. During the time I was there I had full charge and control of the Carrollton office. I was representing the Uhlmann Grain Company. I solicited business. I solicited customers to deal in grain futures or options.

Grain options represent a future transaction, that is a privilege to buy or sell a commodity with a time limit—the option represents the time limit for acceptance of delivery of the commodity traded in. That is a grain option. The definition of a grain future is embraced in that same definition. We term them grain futures. Options, would be, I think, the correct definition for it. I succeeded in getting a number of customers for the Uhlmann Grain Company at Carrollton; approximately 50. I was there about 13 months. I went outside the office to solicit. I solicited option business from Dickinson of Tina, and his two sons,

and Tom Cramer. I mean Charles T. Dickinson and W. L. Dickinson and V. M. Dickinson. I also solicited A. P. Dickson and Joe Dickson, merchants in Tina. I talked [fol. 113] business with them at various places, driving in their automobile, at their store, in my office, at the hotel, at my home where I was living, on the street. They approached me first. One of the boys, Joe Dickson, approached me first. I think he approached me when we were riding in his automobile. I also solicited Tom Mobley and James C. Allemont. I also solicited that very prominent farmer in Tina, Ernest Miller. There were many others whose names I cannot recall. I met Allemont on the train going to Tina when first came to Carrollton before we had really opened the office. We were engaged in conversation, engaged in conversation on generalities, and I introduced myself to him, he introduced himself to me. I had heard of him before as having been quite a speculator in grain. Before going there I had been given — list of men who had speculated with other houses. I was given a list by a man in Bloomington who used to run an office in Carrollton. He was in the employ of Claiborne. The Claiborne Commission Company had an office there several years prior to that. This man gave me a list—knowing that I was going to Carrollton—he gave me a list of names to call upon, and most of these were included in that list.

The only advice that I gave was recommendations that I received from my firm relative to spread transactions. By spread transactions I mean, buy a purchase of one commodity in one market, as a hedge buy a sale of another commodity in another market, or vice versa; or it might be the same commodity. I gave them that advice because I believed in it, because my firm believed in it. I gave advices on many different spreads. We dealt on spreads between Winnipeg and Chicago. I advised our client to take that spread. In doing so I was simply acting as a mouthpiece for the President of our concern. He had many years experience as an exporter and merchandiser in grain and I considered his judgment very good in giving advice as to spread. As a consequence, he advocated at various times the purchase of Winnipeg wheat against the sale of Chicago wheat, at different times, and vice versa. We made many different spreads, and many were successful. I

mean by that they worked; they showed profit; the same as you would show a profit on a real estate transaction, if you went out and bought. Our customers acted on the advice that I gave, in many instances. I had telephone conversations with them, imparting advice to them as to what they ought to do. I advised them both as to purchases and sales at the same time. These men did not buy very large quantities of wheat at any one time—I would not consider at any time there was any one of them that had any great large lines of grain. I think that some of [fol. 114] them contracted for as much as 50,000 bushels. When they did that we required a margin. The purpose of the margin was to protect trade. That is to say, between the fluctuations in the prices of the commodities in which they traded. We had no stipulated amount of margin. That was decided by the company which I represented; it depended on the client. It depended as to how they rated him as to his financial responsibility. I made investigation of the financial responsibility of some of these men in a casual sort of way. I did it just in conversation with various pepole in a position to know. I do not remember anyone in particular.

When I received an order from any of our customers to buy or sell, I immediately transmitted it to Kansas City over our private wire. It went to the Uhlmann Grain Company at Kansas City. If the order was executed, I received back from the Uhlmann Grain Company a confirmation. It came to me from over this same private wire from Uhlmann Grain Company at Kansas City. I remember of receiving checks or payments of money to be used as margins. I received checks from Allemont, Mobley, the Dickinsons, the Dicksons, and many that I can't recall. Those checks were deposited to the credit of the Uhlmann Grain Company either in the First National Bank or the Carroll Exchange Bank. Uhlmann Grain Company kept an account at each of those banks. I did not draw checks on those accounts. The officers of the Uhlmann Grain Company did that from Kansas City, as far as I know. I worked on a salary for the Uhlmann Grain Company. They gave me checks in payment of my salary. Some times they were drawn on The First National Bank of Kansas City, and another bank that I have forgotten, they carried two accounts there. I was never paid out of this fund that I

deposited at Carrollton. I receiver letters from Uhlmann Grain Company at Kansas City at Carrollton. When I closed the office at Carrollton I did not return these letters to the Uhlmann Grain Company at Kansas City. I do not know whether they could be found by a search. If so, I do not know where. I have no recollection of what disposition was made of them.

It was determined whether or not these customers had money coming to them or owed us money by the difference in the price of the market and the price of the commodity in which they were interested; the price at which it was bought and sold and prevailing price at the time the reckoning was made. That is to say, if they bought the grain on a certain date at a certain price and then sold later, and the price on the date on which they sold had advanced, they made a profit, and if it had gone down, if the trade was [fol. 115] closed, it showed loss. Uhlmann Grain Company reserved the right to close the transaction at any time they wanted to without notice; that is, I think they did. I think that many times they acted on that authority; and I think they did so with reference to some of the customers at Carrollton. I do not say all of them. The majority of our customers at Carrollton were farmers. I have no recollection of any of them having taken delivery of the grain which they bought.

"Q. The understanding was that it was not to be delivered, was it not?

A. No, sir, that was not the understanding."

I have no way of knowing whether these men were speculating on the rise and fall of the market. Some of them took their profits down while I was there. They were paid to them by checks from Kansas City, mailed to them direct. Sometimes I saw the checks. When any of them got behind on account of the depression of prices, we called on them for additional margins. They put them up. I think the business was closed in Carrollton about November, 1924; I will not be positive. It was closed by order of the Uhlmann Grain Company. At the time it was closed a lot of the customers had fallen away behind in their transactions. I do not just recall how their losses were made. Never at any time when I was there in charge of that office did I exercise the authority myself to close out any of the transactions. I

did not keep any books of the transactions. I do not remember C. I. Jacobs. I remember J. W. Hollister. I think he was in the real estate business, and insurance. Earl Cheesman, as I recall, was in the printing business. J. N. Calvert was in the coal business. Dr. Boss Brown was a practising physician at Bosworth, Missouri. Mrs. W. L. Dickinson was one of our customers. She was a farm wife. Mrs. Ed. McClain was a customer. I think she was the wife of a laundryman in Carrollton. I haven't any recollection of Mrs. T. S. Mobley. I think you have mentioned all of the ladies who were customers. There was a Miss Riggs also. She was secretary to Tom Mobley at Tina. Robert Stout was in the carriage business. Walter Scott of Carrollton, I think was a retired farmer. I think he handled business for his father. Before his father died I handled lots of business for his father and Walter gave many of the orders. I remember Joe Timmons. At that time I should judge him to be a man 23 or 24 years old. I think he was an undertaker. I think B. Joseph was an employee of the Sinclair Oil people.

[fol. 116] Cross-examination:

We had a blackboard there in the office. Quotations were put on the blackboard. They came from Kansas City over our private wire and they represented the actual transactions and bid and asked quotations on commodities traded in on the various exchanges. These orders which came from these gentlemen in Carrollton while I was there, were for the purchase and sale of grain, mostly on the Chicago Board of Trade, Winnipeg Grain Exchange, Kansas City Board of Trade, and I think as I recall there were a few transactions on the Minneapolis Chamber of Commerce. None of these orders that were given were executed at Carrollton. They were all executed either on the Kansas City Board of Trade, the Chicago Board of Trade, the Minneapolis Board of Trade, or the Winnipeg Grain Exchange. These blackboard records recorded actual transactions and the prices at which transactions were closed on the various exchanges whose dealings they purported to record. Wherever the blackboard did not reflect an actual transaction, it recorded a bid and offer.

All orders that I received I transmitted to Kansas City over our private wire. Some of the orders transmitted by

me to Kansas City were rejected. When any orders were rejected, they were always rejected in Kansas City. None of them by me. I was required to transmit all orders to Kansas City for acceptance or rejection, at all times. No order that was ever given to me at Carrollton was ever attempted to be carried out until after I had transmitted the order to Kansas City for acceptance or rejection. And whether or not the order was going to be accepted and executed or rejected would depend on the action of the Uhlmann Grain Company at Kansas City. And until a confirmatory wire or letter came from Kansas City I would not know, and the man who gave the order would not know whether his order was going to be carried out, or had been carried out.

The Uhlmann Grain Company kept two bank accounts in Carrollton. The checks that were received from these Carrollton people, with whom the Uhlmann Grain Company dealt, which were delivered to me are deposited in banks in Carrollton for the account of the Uhlmann Grain Company. I had no authority to draw against either of the funds in either one of these banks. Neither did I ever attempt to do so. I deposited these checks in the Carrollton banks under instructions from the Uhlmann Grain Company. The only [fol. 117] thing that I ever did or attempted to do, and the only thing I had any authority to do, with relation to these moneys or marginal checks, was to deposit the moneys in these two banks under instructions that I received from the Uhlmann Grain Company. When a deposit of a check was made by these people dealing with the Uhlmann Grain Company, in the manner that I have described, I would immediately notify the Uhlmann Grain Company in Kansas City, giving the name and the amount. I would first wire them over the private wire that I had received such and such an amount from such and such an account; I would then make the deposit in the bank, receiving a duplicate deposit slip for same; I would immediately mail the duplicate to Kansas City, stating in a letter that this stipulated amount of such and such a man would be placed to the credit of so and so; and upon receipt of same they sent the respective customers receipts, by mail.

The records of our customers at Carrollton, their names, addresses, and of the state of their accounts, were kept in Kansas City. I kept no books at Carrollton save the records

of the transactions between Uhlmann Grain Company and these persons who gave their orders through me, were kept at Kansas City. They were not kept in Carrollton. No transactions, no orders, were closed in Carrollton, they were all given to Kansas City, and executed on some market, as indicated by the order. Nothing was ever executed in the Carrollton office. I had no authority at any time from Uhlmann Grain Company to myself, either to accept or reject an order given by the proposed customer of the grain company at Carrollton. And every order that I got I first transmitted to Kansas City for rejection or acceptance, and fulfillment or declination of fulfillment. I never closed anything out myself on account of insufficient margins. I had no authority to do anything like that. If a customer did not respond to a margin call which was given to me by the Kansas City office, I immediately notified the Kansas City office. What the Kansas City office did, who decided that, I do not know. I do know I never did any closing out myself. I called for additional margins when I was notified by the Kansas City office; I was notified by the Kansas City office the amounts to call as margins. I absolutely did no deciding of my own as to when margins would be called for. I kept no ledger records of the accounts. When the customer gave an order it would be transmitted by me by telegraph to Kansas City. If the order was accepted at Kansas City it would be relayed from Kansas City to whatever [fol. 118] market the order was to be executed on. I would have nothing to do with that myself. After the order was executed, we received a telegraphic confirmation of the execution, confirming the order, and confirming the execution of it. Then I notified the customer, if possible, by person or by telephone. A mail confirmation followed immediately, which would be mailed direct from the Kansas City office to the customer. It would show the purchase or sale of the commodity, and also show the name of the party with whom the transaction was made on the respective exchange. That is, if a customer gave an order to buy, the confirmation would show the exchange on which the order to buy was executed, and the seller.

"Q. These orders that were received by you and transmitted by you, in all of these transactions at Carrollton, were executed on one of these exchanges?

A. They were.

Q. In every instance?

A. Yes, sir.

Q. And they were always executed by the Uhlmann Grain Company with some member of the Exchange or Board of Trade?

A. They were.

Q. And were they always executed with a member of the Board of Trade or, if it happened to be Winnipeg, the exchange, who was a member of the Clearing House Association?

A. It would."

I know as a matter of fact that every order that we got in Carrollton covered by all these suits was executed by the Uhlmann Grain Company on what had at the time been designated by the Secretary of Agriculture as "contract markets."

Every one of these transactions or orders that we received at Carrollton during the time that I was there, that was executed or carried out, was an actual transaction, wherein the customer at Carrollton and the person with whom the Uhlmann Grain Company dealt in behalf of the customer, represented an actual agreement to sell or an actual agreement to buy the grain covered by the subject matter of the contract. In each transaction the customer had the right to demand delivery of the actual grain, if he so desired. If his order was to sell, he could be called upon by the person to whom he agreed to sell for delivery. That is what I meant in explaining these contracts to Mr. Jones, these options, these transactions in futures.

[fol. 119] "Q. Did you have any knowledge at any time when these orders were taken by you and transmitted, as to whether or not the customer intended when he gave an order to buy, to demand delivery of the article that he ordered?

A. I did not.

Q. Did he have the right to demand it if he so desired?

A. He did.

Q. And if he wanted to offset it by a sale at the time of delivery, he had a right to do that also?

A. He had.

Q. The same is true of the inverse transaction; if the order was given to sell for future delivery?

A. Yes sir.

Q. He could be called upon to deliver or he could offset it by a purchase if he so desired?

A. He could."

If a man buys 5,000 Chicago May wheat at a given time, and at the same time gives an order to sell 5,000 Winnipeg May wheat, I would call that a spread between two different markets, the same commodity, and one would be hedged against the other. The tendency of hedging is to eliminate, as much as possible, the element of speculation; in other words, reduce your risk. That is the inevitable effect of a spread transaction; it reduces your risk.

In executing the orders of these Carrollton customers which were transmitted to Kansas City, the Uhlmann Grain Company executed the orders in the name of the party who gave the order to me. I mean when the order was actually executed, for instance, an order to buy a commodity on the Chicago Board of Trade, the Uhlmann Grain Company would execute the order in its own name, and would stand behind it. In each instance the actual orders were given and accepted between two clearing members on the exchange, by virtue of the Grain Futures Act and by virtue of the various rules of these exchanges. The Uhlmann Grain Company was behind each one of these transactions, individually behind each one of these transactions that it executed for its customers on these various exchanges. If the customer did not pay, the Uhlmann Grain Company would have to.

"Q. Did the Uhlmann Grain Company in any of these transactions that were executed for their customers, including these gentlemen who transmitted their orders to Kansas City through you, make any profit or sustain any loss by virtue of any fluctuation or change in the market between the time the order was given and the time it was executed?

[fol. 120] Mr. Jones: That is objected to, because it calls for the witness' conclusion.

A. The only compensation they received out of any order was a commission.

Q. The Uhlmann Grain Company made no profit out of a loss made by any of these customers?

A. No sir.

Q. And it sustained no loss out of any profit made by these customers?

A. No, sir."

Uhlmann Grain Company sent monthly statements of their accounts to these customers at Carrollton. They were sent from Kansas City direct to the Customer. When these customers closed a transaction and had money coming from the Uhlmann Grain Company, the money was paid to the customer. The money was sent from Kansas City direct to the customer. I never gave any checks at all to any customer. The confirmations that were sent through the mail should have given the names of the persons with whom the Uhlmann Grain Company dealt for the customer. So far as I know they did in each instance.

These confirmations on these particular transactions were mailed from Kansas City and they confirmed direct from the Kansas City office. They would not have an opportunity to get the name of a party to the trade if it was transacted in Winnipeg and Chicago because those names were never transmitted over the wire, but Chicago and Winnipeg would have the record of the names of the party on the other end. The customer who gave us this order to be transmitted to Kansas City could get the name of the other party to the transaction immediately, if he desired. He could get it immediately upon request. He had that right.

Uhlmann Grain Company was also engaged in the elevator business; it also dealt in cash grain. It was a member of the Board of Trade at Kansas City during the time when I was working for it at Carrollton. It was also a member of the Chicago Board of Trade. It was also a member of the Board of Trade of Minneapolis; it had an authorized representative who was a member of the Grain Exchange in Winnipeg during all this time.

"Q. And every one of these transactions wherein orders were executed by the Uhlmann Grain Company, of these customers whose orders you transmitted to Kansas City, [fol. 121] were executed on one of these exchanges, either

Winnipeg, Chicago, Minneapolis or sometimes in Kansas City?

A. They were."

All of the transactions with these defendant customers were kept in ledger accounts by Uhlmann Grain Company. Every individual purchase and sale was kept in the records in Kansas City; and if they were executed in Chicago or other places they were also kept there. Whenever Kansas City was advised of the execution of an order, if it was executed on some other Board of Trade, a written confirmation of the order and of the fact of its execution would be put in the mail from Kansas City and transmitted to the customer at Carrollton.

Redirect examination:

I cannot state whether the letter of confirmation would disclose the name of the purchaser if it was a purchase, or the name of the seller if it was a sale. Referring to the blackboard again, we posted the fluctuations of the market all during the day, during the market hours. As nearly as physically possible, they were kept right up to the minute. Practically all of the money that was received by me or paid to me at Carrollton I deposited in these banks at Carrollton. It was not always paid at my office, sometimes it was paid in the town or at their homes. I had to go after it sometimes; went to their homes and got it and brought it and deposited it at Carrollton. Most of them, I think, lived in Carroll County.

At the time of these transactions Uhlmann Grain Company maintained its office in the old Board of Trade Building. At some time in there they moved their offices into the new quarters of the new Board of Trade.

A bid and offer is sort of an indemnity on open transactions. A spread is a sort of hedge, rather than a protection, that is, a hedge against the fluctuation of the market.

The orders I received were transmitted to Kansas City. I did not pass judgment on them, but transmitted them to the Uhlmann Grain Company at Kansas City. It was there decided whether it would be accepted or rejected. If they were rejected I would receive notice imm-diately over the same private wire. If it was rejected, I notified the customer. I cannot recall the name of anyone whose order

was rejected. I recall that some were rejected. We have that in every day occurrence.

[fol. 122] The Winnipeg market was not designated by the Secretary of Agriculture as a contract market. He had no jurisdiction over the Winnipeg Grain Exchange. Several of these customers purchased as much as 50,000 bushels of wheat. I can name some who could have paid for that much. One is Ernest Miller, for instance. I think Mr. C. T. Dickinson could have done it. I don't think V. M. Dickinson could have done it. I cannot say whether either of the Mobleys could. J. C. Allemont could have done it. I knew his financial condition then, I do not now.

As to what any of those men would have done with 50,000 bushels of wheat in a business way, I am not in a position to answer; I do not know. I have no way of knowing what they would do with it. They were all of them farmers, a lot of them interested in grain elevators. The Dickinsons, Cramer, Allemont and Miller were interested in grain elevators besides Mobley. They were all members and stockholders of the Farmers Elevator at Tina. I cannot tell you what the capacity of the elevator was. I would think it was over 10,000 bushels. They would handle a great deal more than that in the course of a year.

(It is admitted by counsel for both sides that at the time these suits were filed the plaintiff was a corporation organized under the laws of Illinois, and had its principal office and place of business in Chicago, Cook County, Illinois; also that each one of these defendants at the time these suits were filed, was and now is a citizen and resident and inhabitant of the Western Division of the Western District of Missouri; that Uhlmann Grain Company's principal office and place of business was in Chicago, Cook County, Illinois, at the time the suit was filed, has been ever since, and now is.)

Benjamin L. Hargis testified for the plaintiff as follows:

I am Manager of a Chicago stock and bond and grain house—Lamson Brothers, in Kansas City. I have been in the grain business approximately 25 years, all of the time in Kansas City, Missouri. In the year 1921 I was President of the Board of Trade in Kansas City. I have been

active in the grain business during the past 25 years. I am familiar with the usages and customs of the trade, having particular reference to dealings in futures on the contract market on grain exchanges. In the year 1921, I and Mr. Griffin, President of the Chicago Board of Trade, were invited by a committee of Congress to appear before that [fol. 123] body which was considering the passage of the present Grain Futures Act. We appeared before that body on numerous occasions and gave testimony before that committee which had under consideration the passage of what is commonly known as the Capper-Tincher Bill. In our appearances before that committee the general subject of grain futures trading and its relation to past grain and national and international prices was gone into. I have before me a report gotten out by the Government of the United States, or by somebody, of the testimony which Mr. Griffin and I gave before the Committee on Agriculture in the House of Representatives. In looking at this transcript it recalls to my memory that we discussed and presented to these committee members the relation or effect of the prices and quotations on these grain exchanges on actual shipments in interstate commerce, and also the economic necessity of these tradings—future tradings. I remember of having discussed those subjects. In my opinion, these transactions in grain futures on grain exchanges such as Chicago, Kansas City, and the large places, have a direct bearing on interstate movements or shipments of grain in interstate commerce.

(Objected to by defendants' counsel on the ground that it does not tend to prove any issue in this case; that what prompted the passage of the Act by Congress is not material. Objection overruled by the Court, defendants at the time excepting.)

It appeared at this hearing, and it apparently was clearly understood, that trading in grain futures, say on the Chicago Board of Trade, have a very direct bearing on the prices which wheat, whether in Kansas or Missouri or in Texas, may bring; in other words, Chicago is what might be termed the Greenwich of price registration. At some point people must come to a place where you can register a basic value, and through the use of Chicago as such, not alone the American, but the world price level is established there, on

supply and demand which is sometimes not on the immediate wheat on hand but on the prospective crop. Therefore, it is a forecaster of values and it is a stabilizer. In other words, if we were to run into a very short crop of wheat in Kansas and an exhaustion of those supplies and there was nothing but the actual wheat, its prevailing price would be high, much too high and you would have an exhaustion of supplies, and after that reached a certain level, with spreading, with hedging and with speculating, the high price would then begin to bring down consumption. On the other hand, [fol. 124] if you have a superabundance of wheat and no stabilizer and simply the movement of cash grain from the farms to terminals, there is no possible outlet except through a low price, because a man through a whole season will anticipate his ultimate requirements and not the immediate requirements and in that manner stabilize the price when it becomes an investment purchase in their mind.

"Q. What is the practice of hedging?

A. If you go to the producer, he may hedge if he likes. As a matter of fact a great deal of wheat is delivered at country elevators by the producer and these country elevators will take it in and hedge it or hold it without hedge or storage fee for the product. If a Kansas City house, an export house or a big elevator concern has an export order for a million bushels of wheat, they can't possibly accumulate that cash wheat over night but they can acquire it through the purchase of futures which will enable them to make the sale. It is not a perfect insurance but it is the nearest thing we have to accurate insurance in the cereal market. They know relatively how cash wheat is selling to the buyer. A high protein wheat will bring a high, large premium. That, of course, is reflected in the bidding. They go in the pit the next morning and buy a million bushels of futures against that sale. The market may be up against that purchase. The market may be up one half to three quarters of a cent but nevertheless they buy it and hedge just the same and that is the penalty that goes along with it because in the law of averages, purchases and sales, in an open market will work out to disadvantage and to advantage about the same over a period of time. Therefore the big operator, the big cash operator, keeps hedged right up to the handle. I know the banks require their borrowers to keep their wheat hedged."

Concerning this hedging practice, the southwestern farmer does not hedge. The northwestern farmer hedges a great deal. In this part of the country, the country grain dealer is learning more and more to hedge. He is assuming less risk and he is doing it quite extensively although some of them continue to speculate on cash grain and leave it wide open. The flour miller hedges. The exporter absolutely hedges. As a matter of fact, export sales are ordinarily not made at flat prices. They are made at so much over or under a future delivery. The Chicago delivery price, I will say in July wheat, today would be a basic price, plus so much for freight and other charges, Liverpool. The corporation which conducts an elevator for the storage of grain hedges [fol. 125] absolutely. And by that I mean the terminal elevator or even the interior elevator, in a great many cases where they handle grain in excess of their actual cash capital. They couldn't get along without hedging.

When any of these people hedge—the producer, the grain dealer, the country elevator, the exporter, or the flour miller, they make a trade in the open market. They either buy or sell futures. There is no other way that this can be done. The purpose of a hedge, as I understand it, is to eliminate as far as humanly possible the speculative risk incident to the ownership of the grain. That is absolutely the fact. And the man who hedges must hedge by purchasing against a sale or selling against ownership in these great exchanges such as the Chicago Board of Trade by buying and selling in futures.

This dealing in futures has this effect on the price of grain for the producer: The amount extracted for the handling of grain from the price paid the farmer to export is the lowest percentage of any other commodity in the United States. Take our merchants in cotton goods. They must have a leeway of ten to twenty per cent to carry them against risk because they have to anticipate their requirements. It is the same with furniture. But through the hedge system, which has to carry a speculative feature to afford the balance, the records indicate how small it is. It is very small.

The amount taken by the middleman for handling grain is one per cent or less. I know that one concern here turned over twenty-eight million dollars in grain last year with a net to themselves of less than one-half of one per

cent—cash grain. It is generally recognized that this has been made possible by reason of the fact that the grain man who handles these commodities between the end of the harvest season and takes up the slack, is able to hedge his purchases by the time he goes into the grain futures market and do it. The economic result of this small handling cost is that the intermediate cost is extremely low, and affects the price the farmer gets, and the price the ultimate consumer must pay. That is to say, careful hedging brings about the element of added profit to carry speculative risk, and it gives the producer more and costs the consumer less.

The prices of trading in futures on the Winnipeg market affect the commodities that are dealt in in the same relative way as the prices of Chicago, Kansas City and American markets do. Sometimes the markets get out of relationship and then you get into spreading.

[fol. 126] I am familiar with the method commonly followed and used by members of the grain exchanges—especially Kansas City and Chicago—in dealing with each other in the purchase and sale of these futures. I am a member of both the Kansas City and Chicago Exchanges. Under this customs and practice a man is obliged, in case he makes a purchase of a grain future, to accept delivery of it. He enters into an engagement to accept delivery of it at a certain specified time, and if he sells it short, he is required under the rules, to make delivery within the specified delivery period, although there is nothing to keep that man, if for some reason he desires to sell out his grain, which has been purchased for July delivery—to sell it in July—there is no reason why he cannot do it and close the one side against the other and vice versa. If it weren't so you couldn't hedge.

The system of offsetting is this: If you buy ten wheat today for July delivery contract grade from Chicago and assume that I am either a hedger or speculator, as the case may be, and ten days hence the market may be either lower or higher; if I sell a like amount of contract grade it closes the original transaction. There is a grain clearing house which handles the interchange of trades in Kansas City, Chicago, Minneapolis, and so forth. Just as the

bank clearing house does in Kansas City. The same is true, I think in Winnipeg; but, nevertheless, they offset whether the transactions are cleared or not through the clearing house. These offsetting transactions between these clearing members operate the same way as banks operate by the cancellation of the transaction.

"Q. So that a man who makes a purchase from another man or one member of the exchange who makes a purchase from another by subsequent purchases and sales he may ultimately be dealing with somebody else rather than the original one?

A. It has lost its identity after the first day's clearing.

Q. Is that practice permitted and recognized by these various grain exchanges?

A. It has been established by them as the only way to eliminate risk. In other words, this central clearing house closes up all trades that it made, one firm against another and instead of you being responsible to me for a contract we have the grain clearing company responsible to each of us for that contract after the first day's clearing.

Q. And each one of you is responsible to the grain company?

A. Yes.

Q. The obligations and responsibilities are mutual?

[fol. 127] A. But I may buy wheat from you today and accept delivery in July from the clearing company and it may come from an entirely different source."

I cannot give the percentage of these futures transactions which result in the actual delivery of the grain. To illustrate: Suppose I buy 10,000 bushels of wheat in the country tonight, and I hedge it tomorrow morning by a sale of 10,000 July wheat, and later in the day I sell that ten cash wheat to another dealer here and he sells me the July wheat I had sold. There is a transaction of thirty thousand against that one ten thousand in one day. That ten thousand wheat can conceivably go around the pit in hedging ten, twenty or any number of times in a day. You must have a volume of trade largely in excess of any cash demand to give you a liquid market.

"Q. What effect has a liquid market and what advantage, if any, is there in a liquid market brought about by the

great disproportion in the volume of trade between future sales and actual cash sales?

A. We will assume American exporters sell—in the aggregate throughout the country sell five or six million bushels of wheat over night during their rush season, when the business is best. They haven't that supply on hand or if they have it on hand they have it under hedge, they go into the market the first thing in the morning to buy in that wheat against foreign sale. Unless you have a foreign market it would be impossible to buy five or six million bushels without shooting the price up and as soon as that is done it would immediately fall."

The relative portion in volume of dealing in futures, not resulting in an actual delivery of the commodity, and actual deals in cash grain is very great. This has a very desirable effect on the ability of the farmer immediately to hedge his wheat growing in the ground. This great volume has a tendency to stab-lize prices. Naturally, the bigger the object to move, the more difficult to move.

Cross-examination:

A spread is a purchase or delivery in some market and the sale or delivery in some other market. That is not speculation between the two markets. It is an attempt to equalize balance just as we attempt to equalize rates balances when one freight rate is made in a certain territory there have to be certain other changes. Spreads are wider and narrower. That is an abnormal condition a man attempts to correct by trades.

[fol. 128] Redirect examination:

"Q. What effect, if any, has this dealing in futures on the elimination of speculation so far as the owner of property is concerned if he desires to eliminate it in shifting the speculative risk off——

A. (Interrupting.) The public generally carries the hedges of the United States. That is the general conception of it. Unless there was a speculative rule there wouldn't be anybody to take the peak movement of crops except at a sufficiently low price to guarantee against loss just as they do in the Argentine where they haven't any duty.

Q. When you say speculation you mean dealing in futures by the public generally as commonly conducted on the Boards of Trade by the public?

A. That is commonly called speculation."

I differentiate between speculation and gambling. The difference is this: If you were to come to me today and wager five hundred dollars that it would rain before night or that a certain wheat field would make fifteen thousand bushels to the acre, I would call that gambling, but if you made a transaction in grain futures and put up your money, you would become one of the equalizing factors of the trade and you would help to support the market or depress it, as the case might be, but you find a balance through speculation. Julius Barnes, when he was at the head of the Grain Futures Administration, and through the Department of Agriculture, assembled figures which showed that it took about two hundred million bushels in open futures to carry the actual hedged floating grain in the United States, and by that I mean grain off the farms, and the actual volume of trade must be much larger than two hundred million bushels to keep that liquid. Speculation is regarded as an inseparable attribute of the ownership of property. If a man owns property its value goes up or down. Grain futures trading is supposed to be an insurance, and it is so considered because it is necessary. I cannot better state it than to say that I can go to the Bank of Commerce and borrow dollar for dollar practically against warehouse receipts for grain in store if I sign an agreement to keep it under hedge all of the time; but if I would attempt to borrow without hedge, they would probably lend me seventy-five cents on the dollar.

I agree with the following statement made by Mr. Griffin made before the Congressional Committee:

"Sometimes the word 'speculator' is used in a sinister sense—as the equivalent of 'gambler'. This is incorrect. [fol. 129] The distinction between gambling and speculation is recognized by all economists and equally by all thoughtful persons: The risks of a speculator are those which are inevitably incident to the ownership of property. The gains and losses of a speculator are those which are incident to actual changes of value. On the other hand the

risks of a gambler are incident to nothing—such risks are purely self-created. The gains and losses of a gambler do not depend on changes of value—the gains of one gambler depend upon nothing except the losses of another."

Q. Do you agree with that?

A. That is true.

Q. (Continuing quotation by Mr. Griffin): "Hence the gambler performs no economic function, and since gambling contains recognized elements of evil, it is forbidden. But the purchaser and holder of grain performs a valuable economic function, for without this intermediate ownership each ultimate consumer would be obliged to purchase, at harvest time, his entire annual supply of grain."

Recross-examination:

From my viewpoint there is no such thing as gambling in grain. I think a man who enters the grain market and subscribes to the rule laid down wherein he states he will deliver or accept delivery, is practicing subterfuge if he goes in there to gamble. One of the things the Grain Futures Act was intended to remedy was grain manipulation, such as the purchase of a larger amount of grain than was available which would result in a corner, or by continuous selling to depress grain prices below their actual level. I think we must all admit there have been times when, for a short period, a speculator of huge wealth could temporarily either depress prices or boost prices, but eventually you come to your law of supply and demand which prevails, and he can live but a short time. He must take the high-priced grain and attempt to bury the crops, and if he is short he must buy from somebody.

There is no such thing as a bucket shop under the United States laws, and I do not know of any in existence.

"Q. You know what a bucket shop is?

A. Where a man takes both ends of a trade—no transaction made.

Q. It is pure fiction, isn't it?

A. It is absolutely illegal and one of the most undesirable practices we ever had in the country.

Q. And so undesirable is it that the rules of these Boards of Trade prohibit its members from operating them?

[fol. 130] A. Not only that but they go out of the way to hunt them out and have cooperated with the United States District Attorney in Kansas City and elsewhere to eliminate them.

Q. But they are an evil to the operators?

A. They are absolutely without the pale of the law.

Q. They are places where trades are made in fiction and no actual sale is made and there is no intention of delivering?

A. That is the bucket shop.

Q. And where such sales are made, then you don't hesitate to say those transactions would be illegal and void?

A. I should say they are illegal and void.

Q. Not only under the laws of the state but under the rules and regulations of your Board of Trade?

A. That is absolutely correct.

Q. And where a dealer is conducting a place of that kind and inviting people to trade in them and where just a margin is put up with no intention that there shall be any actual trade, sale or delivery, that is a violation of the law?

A. A bucket shop is a violation, yes, and any man who is a member of any exchange is subject to expulsion if caught.

Q. A member of an exchange could do that and——

A. (Interrupting. I haven't known——

Q. (Interrupting.) I say that notwithstanding that you have those rules a member of these Boards of Trade could set up a bucket shop and operate it, couldn't he?

A. Oh, it is possible for anybody to do it.

Q. And when he did it he simply violated his obligations to the board?

A. And lost his membership, yes.

Q. Now, would you say that a man or a company or a concern was conducting a legitimate business under that Act of Congress that was running a place where he invited his customers to put up margins and deal in grain purchases or sales when there was no intention to deliver but just settle the whole transaction on the fluctuation of the market?

A. Without any execution in the market?

Q. Yes?

A. That is a bucket shop.

Mr. Jones: That is all.

Redirect examination:

By Mr. Stinson:

Q. Now explain just a little bit more in detail, if you will, some of the things that a man who conducts the bucket shop does. You said something about his taking the other side of the transaction himself. You meant what by that?

A. If you were in the bucket shop business I would come in or you might invite me to sell five thousand wheat and there would be some quotations on the bulletin board and [fol. 131] you would give me a memorandum of the transaction at a certain price. You are both principal and agent. You just bet he is wrong if you are operating a bucket shop.

Q. In other words, if I am the bucket shop man I take the other end of that transaction myself?

A. Quite right.

Q. Now, suppose, I take an order from a customer of mine in Carrollton, Missouri, and I am a member of the Board of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Minnesota, and Winnipeg, Manitoba, and I take an order from a customer to purchase ten thousand bushels of Chicago May wheat and suppose—I am assuming that you are the customer—suppose you put up a margin with me in Carrollton against that purchase and suppose that my local office in Carrollton telegraphs the order to the Kansas City office and that Kansas City, in turn, relays that order to Chicago and that I, a member of the Board of Trade of Chicago, execute that contract by going into the pit and buying the quantity of wheat ordered by you in Carrollton and I obligate myself under the rules of the exchange to pay for that wheat under the usual practices and I make the trade in my own name for you and I make the actual trade and there is a record made of it and I confirm the trade to you by relaying the information from Chicago to Kansas City, and from Kansas City to Carrollton: Am I conducting a bucket shop or not?

A. Oh, no. You are in the legitimate commission business acting as agent.

Mr. Stinson: That is all.

Recross-examination:

By Mr. Jones:

Q. Mr. Hargis, suppose that I have an office in Carrollton and if you have placed an order with me to buy 5000 bushels of wheat and you put up a margin, and then later I do the same thing again and the market goes against you and I represent that it has been sold and that you are down and out, that you have lost and that you owe me several hundred dollars and that I am sorry the market went against you, that I was disappointed in the turn of the market, that it didn't turn out as I expected and place another order, and it is my opinion and judgment that you will come out better the next time. What would you think of that? What would I be doing?

A. You wouldn't be bucketshopping. You would be unwise to say the least.

Q. I would be trying to get you to speculate?

A. I don't know. It might be that I would come to you for advice.

[fol. 132] Q. I am just hypothecating the case the way I understand it is. Would that be legitimate trading?

A. I doubt if it is wise to press a man too far to make a deal but I don't see that it affects the validity of this contract.

Q. With no delivery intended and none made?

A. No, I don't say that. If he made the contract on the Chicago Board of Trade, the principal becomes subject to all the rules and regulations of the exchange his agent is a member of.

Q. And after I suffer losses and you know I don't intend to accept a delivery and my loss is such that I got behind with you and I continue to advise you to make those trades, what kind of a transaction would you call that?

A. I would say it was unwise soliciting, absolutely.

Q. And it would be bordering on absolute speculation, there is no delivery contemplated?

A. Well, I don't think—I can't conceive of a house, a member of the Chicago Board of Trade or the Kansas City Board of Trade or any other Board of Trade permitting any customer to make a contract if he admitted he had no intention of observing the rules to receive delivery and make delivery.

Q. Now suppose he does do it, then what?
A. The solicitor does do it?
Q. Yes?
A. I would say he is culpable.

The Court: What?

A. I would say he is culpable if he was to take a trade if the client had stated to him there was to be no delivery.

Mr. Jones: That is all.

Mr. Stinson: That is all.

(Witness Excused.)"

RICHARD UHLMANN, called as a witness for plaintiff, testified further as follows:

Direct examination:

Referring to the statement of defendants' counsel that the delivery month in some of these transactions with the defendants were changed, I believe some of the defendants were short Winnipeg October wheat, and as we approached that period, rather than have them default, or we ourselves default, which is something the Uhlmann Grain Company [fol. 133] has never done, we simply transfer their short holdings in October to some further distant option. That transfer was accomplished in this way: Where time wasn't an item, we would try to do it as conservatively and as best the market permitted by limiting our order given the broker—the broker in Winnipeg—to buy any October, and sell any November at a guaranteed limit. That was done wherever practical.

"Q. What then, as a matter of fact, if you were short on October wheat and you extended the option or whatever you might call it in November, what, as a matter of fact, happened with respect to these transactions? It seems they were short on October wheat and they get a contract to deliver wheat in October in Winnipeg——
A. Yes.
Q. Was that transaction closed and a new one made?
A. Yes, sir.

Q. An actual transaction commenced with some Winnipeg grain exchange?

A. Yes.

Q. And a new contract made for November delivery instead of October?

A. Yes.

Q. At this particular time they were low on their margins?

A. Yes sir.

Q. Did the Uhlmann Grain Company sometimes buy them for them without exacting any additional margin?

A. Yes."

Cross-examination:

In making this transfer we would instruct our broker to buy the October and sell the November.

"Q. Who gave these instructions?

A. I think in a good many instances they came from our customer in Carrollton upon our advice.

Q. Why did you give them that advice?

A. Simply because at that season of the year—rain had extended over a longer period than usual; and we thought it would be easier to make delivery in November than October."

I would not be surprised that there was more than a million bushels of grain transacted in Carrollton; but it was distributed over a great number of accounts. This is not a large amount for a town like Carrollton. I have been manager of an office in Lafayette, Indiana, where I traded ten million bushels for one man—Jackson Brothers.

No wheat was delivered under any of these Carrollton contracts. The record shows this. I knew that.

[fol. 134] "Q. Well then, from that, and from the habit of dealing with these people, you knew no delivery was intended?

A. No; I didn't know it because other deliveries were future, and when speaking of futures they are speaking of an uncertainty."

When you are speaking of futures, I mean that no one has a knowledge of what will happen tomorrow, or any-

thing else; I mean there are no guaranties. And so when men are dealing with grain in the future, they are speculating on what the future is going to bring about in regard to prices. I did not know that this is what these men were doing; our *ph*ychology will only tell us what we imagine is in the other person's mind. We have no insight. If the thing had been a cinch, all of Carrollton, instead of these fifty men, would have been trading with us. I mean by that that in futures there is a certain element of uncertainty, and if there had been a guaranty that everything would be 100 per cent the way they thought it would, there would have been no speculation about it. But there being no cinch, I guess that the matter was speculation on the rise and fall of the market. That is just a casual thought of mine. Paul Uhlmann had charge of the plaintiff's affairs in Kansas City. He had authority to speak for the Uhlmann Grain Company and give advice. When these trades went against these men, the Uhlmann Grain Company at the time took the attitude that there would be a change for the better. Mr. Hargis said the markets were so out of relation with each other that the chances were that Winnipeg and Chicago would come closer together at that time. If it had, the advantage to them would have been that their trades would have shown a profit as compared to the older status.

"Q. You would settle that in the difference of markets?
A. Yes.
Q. And in that event no delivery would be intended by either party?
A. You can't state it definitely; there might be."

I mean by difference in the market, for example: You might be a real estate holder, or you might have an option on a piece of real estate where you actually contemplated delivery, but if someone comes along later and says, "I'll give you $5,000 for it"—you actually contemplated delivery, but by resale you would cancel out that obligation.
I do not know whether all of these men lost or not.
As to the amount of money our customers in Carrollton lost in the operations carried on by us for them, I would say [fol. 135] there were probably $65,000 or $70,000 owing to us after the payments which we had met, and after the

margins or money had been exhausted, or offset. This includes about 46 people, among whom only five are these defendants. I mean by that that after taking into account all of the money that these various parties paid us, after the margins had been eaten up and lost in the transaction, they still owed us approximately between $65,000 and $70,000, after deducting also payments made against profits which they had taken down.

Redirect examination.

I never knew any of these Carrollton people to refuse to take down their profits when they made them, neither did the Uhlmann Grain Company ever fail or refuse to pay to these men the profits which they made when they made them. The funds were immediately disbursed to them.

"Q. In these transactions on which various boards of trade, whenever there was a purchase—an order given to purchase on any of these grain exchanges, was there a corresponding sale of the same goods,—the same commodities?

A. Yes, sir.

Q. Now, when these transactions were closed and assuming now that an order had previously been given to purchase 10,000 bushels of Winnipeg wheat and then an order was given to close that transaction, upon what market was that transaction carried out?

A. Upon the same market where the initial trade was engaged."

O. W. Rowe, recalled for further recross-examination, testified as follows:

Recross-examination:

I have here the records showing the number of bushels that each of these defendants dealt in while we were in business at Carrollton. A. P. Dickson began in February. The total amount bought and sold by him during his entire operations on all of these Boards was 555,000.

The total amount dealt in by Mr. Calvert is 685,000; Joe Dickson, 585,000; Ernest Miller, 535,000; Charles T. Dick-

son—I mean C. R. Dickson, 70,000 bushels; S. P. Dickson, 605,000 bushels.

From these figures I cannot give you an idea of the number of bushels remaining forty or odd dealt in.

[fol. 136] Defendant's Exhibit "C" appears to be a letter of the Uhlmann Grain Company which I presume was written by Paul Uhlmann.

Exhibit "A" appears to be a letter dictated by Paul Uhlmann.

Redirect examination:

The 555,000 bushels of wheat dealt in by A. P. Dickson represents a purchase against a hedge of the entire account.

"Q. Under the rules of the exchange could he transfer—offset his purchases against his sales and make deliveries that way without going and buying 250,000 bushels of wheat and then going and selling it?

A. Yes.

Q. Under the rules and regulations and under the representations he would get from the Uhlman Grain Company?

A. Yes.

* * * * * * *

Q. No sir. Could he offset the purchases he had contracted to make against the sales he had contracted to make?

A. He could if they were in the same market and if they were in different markets he could not."

Recross-examination:

If a man bought on one market and contracted to sell in another, the measure of his liability would be on the completion of his contract after the contracts were closed out; that would ultimately turn out to be the difference at which he had bought and sold. And if one market fluctuates either up or down, it would either decrease or increase his liability.

Plaintiff rests.

Defendant's Motion for Declaration of Law

At the close of the plaintiff's case, an oral motion was made in behalf of each and every defendant for a declaration of law to the effect that the plaintiff is not entitled to recover against such defendants. The request was denied, each defendant at the time excepting.

Defendants' Evidence

Thereupon, to sustain the issues on their part, the defendants, by their counsel, offered the following evidence:

Defendants offer in evidence the deposition of Paul Uhlmann.

[fol. 137] (Counsel for plaintiff states into the record that Mr. Paul Uhlmann, who lives in Kansas City, was sick at the time and unable to attend the trial.)

Paul Uhlmann, testifying for defendants, deposed and said as follows:

I live in Kansas City, Missouri. I am Vice President of Uhlmann Grain Company. Its main office is Chicago, Illinois. It has an office in Kansas City, Missouri, in the Board of Trade Building. I am in charge of that office. I have been here five years. Uhlmann Grain Company is engaged in the grain business. We are in the elevator business, having a large elevator here in Kansas City. Its capacity is about two million bushels. We execute orders for customers. I mean by that, orders in futures. They are executed on the exchange in the different markets. In 1924 I was in charge of the Uhlmann Grain Company office at Kansas City. The affairs of that office and its business were managed under my direction and supervision. I am acquainted with its system of bookkeeping. A man by the name of Rowe was in charge of it. He is with us now. In 1924 we had a branch office at Carrollton, Missouri. It was operated under the name of the Uhlmann Grain Company. E. S. McDonough was in charge of that office. He now has charge of our New York office in the Produce Exchange Building.

I did not call at Carrollton during the time we had an office there; yes I did, once or twice. I was in the office. At the time, Mr. McDonough was in charge, for the Uhlmann Grain Company and representing the Uhlmann Grain Company. He received his orders or instructions from our customers. I gave him instructions about how to manage the business. They were simply that he was to take orders from our customers, and to wire them to us as soon as he gets them. He did that. We received them. When we received them we wired them to the respective markets, what they were given for. McDonough wired orders to us and we wired them to Chicago, Winnipeg or Minneapolis, or whatever they were given for. These orders came by wire over our private wire. We had a private wire to Carrollton, Missouri. Those orders were transmitted to us over that private wire to our office in Kansas City. I think McDonough is a telegraph operator, but he had an operator in addition. I do not remember who he was. When these orders were received the clerks checked them on our books. We have those books here in our office now.

[fol. 138] Referring to the account of I. N. Calvert, I presume that February 26th is the date that the account commenced. The books would show. The account was closed November 8, 1924.

The words "P. & S." on the first item, February 26, 1924, means there is an accounting; it's a statement showing the transaction. If the transaction showed a profit, there is a credit item to the man, and if it showed a loss, there is a debit item. The letters "P. & S." in connection with that first item, to which is added the figure, $63.00, means that there was a $63.32 loss. The account does not show all the net amount. It's on both sides. It's simply, the net amount is booked on the ledger, not the details. We can get them for you; they are in our possession. I will produce them at the time of the trial.

I would be willing if you (counsel for defendants) will call at our office to allow you to look at our books.

The books would show the kind of grain Mr. Calvert dealt in. I think he dealt mostly in wheat. He gave his orders at Carrollton for the grain he bought. The same is true as to all the others who dealt at Carrollton. I do not know what kind of orders were given. I presume some of them

were given over the phone; or given verbally to him in the office. It is not customary to have a written order. It is not always customary to write them out. None of them were written out and sent to us.

I correspond with McDonough while he was in Carrollton and received letters from him. I am not sure whether we have any of those branch office letters. There would not be many because it's all done over the wire. We might have copies of the telegrams. We have copies of the orders.

When these customers at Carrollton gave their orders we require either that they put up some money in advance, or that they pay us in case the transaction showed a loss. It depends to a great extent on who he was. If they were men who lived there all their life and traded before, that we knew, we might not have asked them to pay us immediately; but the usual rule is to require some margin. The purpose in requiring that margin is to secure us against loss.

"Q. How would you sustain any loss?

A. Because we only acted as their agents, and in case there is a loss in the transaction, we naturally paid it."

We were responsible to the Board of Trade. For example: If we should sell wheat for a customer at 90 cents, [fol. 139] and the market would go up and we would buy it back at 92 cents, on 10,000 bushels he would lose $200.00, so our loss would be $200.00 if he would not pay us. The margin protects us against the fluctuations of the market. When we settle with our customers, we ascertain the amount they were to pay or were to receive in this way. If they made a profit, we paid them what we owed them. The profit was ascertained after the transaction was closed out. We settled all differences between what the market was when they bought and what it was when they sold. That would determine our liability to them and their liability to us. If the fluctuations in the market showed an increase between the time they bought and the date they sold, that difference would represent their profit and what we owed them. These trades—of course, it was not just the difference in the prices—the trades—we actually have to pay the money to the Board of Trade.

"Q. Who did you pay that for?

A. We pay it for them to the clearing house."

If, for example, Mr. Calvert gave us an order on the 7th of June to buy 10,000 bushels of wheat, we give an order to a broker to buy 10,000 bushels of wheat on the Board of Trade, and he confirms that order to us by telegram. The telegram won't show who the wheat was bought from, but the confirmation does. I can look that up. When that notice comes to us we give Mr. Calvert a confirmation.

"Q. Does that disclose to him who you bought it from?

A. I am not sure about it, but a man can always find it out if he asks us, and in most cases it does show who we bought it from.

Q. Who you bought it from?

A. Yes."

DEFENDANTS' EXHIBIT 1

Defendants' Exhibit 1 shows that we bought 50,000 bushels of May wheat in Chicago. That is a sample of the statements that we sent our customers for whom we purchased. Every time we made a purchase for any of the defendants in these cases, we sent them a similar statement. It was mailed at Kansas City; all of these statements were sent from Kansas City. On the other hand, if we sold we sent them a statement also.

DEFENDANTS' EXHIBIT 2

Defendants' Exhibit 2 shows that we sold 10,000 bushels of December wheat on August 29. That is a sample of the statements that we sent in cases of sale from our Kansas [fol. 140] City Office. And every time a sale was made we sent one of them out.

Defendants' Exhibit 1, which is a form of a notice of a purchase, does not show who it was bought from. That is true of all the statements that we sent out in these cases.

Exhibit 2, which shows a sale, does not show who it was sold to. This is true of all notices of sale. The reason for that is that in order to shorten the telegrams between Chicago and Kansas City, we did not give the names, but they are on file in our office.

"Q. But the names of the persons from whom you bought, or the persons to whom you sold, were not disclosed to those customers?

A. Only if they asked for it."

I do not recall any of them ever asking for it.

These telegrams were sent over a private telegraph wire leased from the Western Union. We have a contract with them. I do not have a copy with me, but I can get it.

We ceased operations in Carrollton, I think, the latter part of 1924. When we did, we gave up this private telegraph wire. We took the equipment out of the office. It consisted of a few desks and chairs and a telegraph instrument. We posted the markets on a board, a blackboard.

"Q. And what was the purpose of that blackboard?

A. To show everybody who came in and wanted to know what the market is; what it actually was."

During the day, as the market rose and fell, it was posted on this board. The commodities listed on this board were wheat, corn and oats, also rye.

Referring to the statement of account attached to our petition against Mr. Calvert, the figures over which the stenographer has written the letter "A" are numbers, just from our books. This account attached to the petition in the Calvert case does not tell the number of bushels of wheat or other kinds of grain he bought from that particular date, nor the number of bushels sold on any particular date.

Some of these orders were executed on the Kansas City Board of Trade. We are a member of the Kansas City Board of Trade. When those orders came we executed them on the floor of the Exchange here; and if they were in Chicago we wired them to Chicago. We have member-[fol. 141] ship there. We have also at Minneapolis and also at Winnipeg. We wired them to the offices at these respective towns wherever they were to be executed. They were received at Kansas City and then relayed, under our direction, or the direction of our office. A spread is grain which you buy in one market and sell in other markets against it as a hedge. For instance, one might sell 10,000 bushels of wheat at Winnipeg, and hedge it by a purchase of Chicago wheat against it, because there should be always the same difference between two markets, you see, but when the difference is either wider or narrower, one can take advantage of trading that way. For example, you give an order to buy me 10,000 bushels of Chicago wheat; I would hedge in Winnipeg against that, by selling 10,000 bushels

in Winnipeg. If you bought in the Chicago market, and that market went up three cents, and the Winnipeg market at the same time went down only two cents, you made one cent a bushel. If it went the other way you lose.

"Q. How would you settle that spread with me; I having given you the order?

A. I buy it in Chicago first and sell it in Winnipeg and then when you want to close I do it, except I sell in Chicago and buy in Winnipeg."

* * * * * * *

Q. How would you determine how much to pay me?

A. Exactly what we get from the Exchange, less the commission.

Q. We would settle it by the difference in the market?

A. Yes.

Q. If it went one way I would win and the other way I would lose?

A. Yes.

Q. When I lose, who profits?

A. Well, this is a hard thing to say, because it all goes through the clearing house."

Before we closed our business in Carrollton we ascertained the financial condition of these men only in a haphazard way. I asked the manager, McDonough. And I asked the First National Bank at Carrollton. I wrote no letters of inquiry about any of them but I talked to the cashier of the First National Bank quite often.

I could not tell from this statement the amount of wheat or corn that Mr. Calvert bought or sold at any time. Our books show what the largest amount dealt in at any time would be. On this statement the words "Ck. Mgn." mean [fol. 142] that he put up a margin. That was to protect us against the fluctuations. We did not deliver Mr. Calvert any wheat or grain; neither did we deliver any to any of these Carrollton customers.

The contracts made between us and these parties were recorded through the Chicago office. They were not recorded in Kansas City office. They are in the possession of Uhlmann Grain Company in Chicago, and recorded in their office there. They were not recorded in Kansas City

because it is a matter of convenience to keep them in Chicago.

"Q. Well these books you have here, don't they show the same thing?

A. They show everything except with whom the transaction was made. They show the quantity and the price."

When we received these orders we turned some of them down. And when they were turned down the orders were not relayed to Chicago. I turned some of them down when I thought the people traded too heavily. I would arrive at that conclusion from the general idea I had of their financial standing. I mean they would be trading too heavily when they went beyond their means. I did not turn down many, I turned down some. I do not have a record of those I turned down. I made no record of that. I do not remember whom I turned down, but I remember that some of them were turned down.

When these orders were received from McDonough, it would be about one minute until they would be transmitted to Chicago. When I turned them down I would not notify the Chicago office. I had full control of our office here and power to manage it and to approve or reject the orders. Mr. McDonough was authorized and directed by me to solicit customers, and he did that.

Puts and calls are trade privileges. A privilege is a hard thing to explain. I don't think they ever traded in puts and calls down there; they didn't trade in them. There were no trades made in puts and calls; they were on the Board of Trade. They didn't trade in them through us.

We reserved the right to close any account at any time we wanted to; and we exercised that right. In these particular cases, these men wanted me to carry their trades until they owed us a certain amount and then they asked me to close them out and I did that. It came about that they were indebted to us when the accounts were closed because they lost money on their trades. In those cases [fol. 143] where we have sued on notes, we have a book account of the items that make up the amount of the notes. In a good many cases the notes are for larger amounts than the people owed us. These notes were given to us just like money. They gave us a note for about—say one man gave us a note for $4,000, just as an example. Before the transaction was closed out he said, "Now, instead of

putting up the money, I give you my note, and when the note—the amount—is about as much as I owe you on the note, I want you to close it out." When we brought the suits we credited the notes so as to bring them down to the exact amount. The amount sued for on the notes is the amount actually due at the time the suit was filed.

Referring to the suit against C. T. Dickinson, his note is for $1,547.00.

As to the note signed by W. L. Dickinson and C. T. Dickinson, so far as I remember, the Dickinsons gave us individual notes, and one of the older Dickinsons endorsed them, but we had separate individual accounts with each. On the note that was given by W. L. Dickinson, I presume was to close the account.

Cross-examination:

Whenever an order was given to the local man at Carrollton that order was telegraphed to Kansas City; and it was telegraphed to Kansas City so the order could be executed. So there wasn't any completed contract until the order was executed in Kansas City. Every one of these orders whether it was for the purchase of grain or for the sale of grain was executed on some Board of Trade. It was executed by the Uhlmann Grain Company with another broker on the Board of Trade, either in Kansas City or Chicago or Winnipeg; except in Winnipeg we used a house with a different name than the Uhlmann Grain Company. But they were our agents. When a house in Winnipeg executed an order for us, they executed it with or entered into a contract with a broker on the Board of Trade. Whenever an order was given by telegraph, it was always confirmed in writing by us at Kansas City, and confirmation mailed back to Carrollton to the man who bought or sold; always on the same day. And these confirmations were always sent through the United States mail.

All of these accounts, whether represented by note given by these men, or whether representing a balance due, was for the amount of our loss, what we had to pay out for them as their agents.

[fol. 144] "Q. Did you in any of these transactions make any profits yourself out of any losses made by any of these men?

A. No.

Q. So that the sole interest—financial interest of the Uhlmann Grain Company in these transactions was the commission?

A. That's right.

Q. And whether these men won or whether they lost or whether they made a profit or whether they made a loss, you never sustained any loss or any profit provided these men paid what they owed?

A. That's right.

Q. Whenever they made any profit in any transaction, did the Uhlmann Grain Company or did it not pay these men?

A. Always paid them if they had a credit.

Q. How often would you pay them?

A. Whenever they asked for it."

The Uhlmann Grain Company is a member of the Kansas City Board of Trade. That Board has been designated as a contract market, and had at the time, by the Secretary of Agriculture. Uhlmann Grain Company is also a member of the Chicago Board of Trade and was a member at all the times these transactions took place. The Chicago Board of Trade had been designated as a contract market by the Secretary of Agriculture. Whenever we got an order either to purchase or sell from a customer at Carrollton, from any and all of these defendants, say on the Chicago Board of Trade, we told a broker to buy it or sell this amount of wheat for us. When I say broker I mean somebody connected with the Board of Trade. I could have executed the order myself. I could go onto the Board of Trade floor during trading hours and actually execute the order by buying that many bushels of wheat. I bought from whoever wanted to sell. I always purchased from a member of the Board of Trade. Under the rules of the Board of Trade, nobody but members had the right to buy or sell on the Board; and the transactions were always executed by a member of the Board of Trade on these contract markets. The orders were always given in our name because the Board of Trade only recognized the Uhlmann Grain Company. We stood behind every purchase that was made. We were obligated, under the rules of the Board of Trade where the trade happened to be made. We kept a margin up ourselves to cover all our purchases and sales with the

clearing house or the Board of Trade. And whenever we made a purchase in our own name for a customer in the [fol. 145] course of the day, we would be charged with that, and if we made a sale for a customer there would be the same charge against the Uhlmann Grain Company.

The quotations that were put on the blackboard at Carrollton were received from the Board of Trade at Chicago and Kansas City. It actually reflected the prevailing market prices of grain at that time as shown by the quotations on the Board of Trade itself.

"Q. Now, the moneys that you are seeking to recover from these various defendants, outside of your commissions, do all of these amounts or any of these amounts or any part of these amounts represent any profit to the Uhlmann Grain Company?

A. No.

* * * * * * *

Q. And you are out the money by reason of the fact that you, when these transactions were closed and, for instance, they sold for less than the price that they bought, you made these contracts in your own name and stood behind them and actually paid out the money that represented the loss?

A. That's right."

These spreads are where a man gives an order to buy in one market a certain amount of grain, and to sell in another market the same amount. These are hedging transactions. In such transactions the element of risk is practically eliminated, so that when a man bought a certain number of bushels of Chicago May wheat and sold an equal amount of Winnipeg May wheat, if there wasn't any fluctuation in the difference between the two markets, why you wouldn't have any loss or any gain. And whatever fluctuations there might be would represent a comparatively minimum loss. Business men, farmers, grain elevator men, millers, large wheat buyers and sellers, commonly hedge their transactions in order to eliminate the speculation or loss or gain feature of their transactions. The Uhlmann Grain Company, which has a large grain elevator, does this very largely. It is all hedging, in fact, the entire thing.

When one of these customers would buy 10,000 bushels or give- *an* amount of grain in one market, and at the same

time sell a given amount in another, he himself would have the right to say as to when he would sell the one and buy the other. He wouldn't have to close both transactions at the same time. That was at his opinion, so long as he kept his margins up so we were protected from loss. As a mat-
[fol. 146] ter of fact, these notes were given by these people in lieu of what is ordinarily a margin; not all of them, but the larger ones.

We reserve the right to close out these transactions in order to protect ourselves from loss. And unless the margin got down to so narrow a point that we could not, without danger of losing money ourselves, continue to maintain a transaction open, we always waited until the man gave us an order to buy or sell before the transaction resulted in a purchase or sale.

While we never delivered any of the grain to these men, they could have delivery if they called for it. If they elected to sell rather than call for actual delivery that was their own affair.

"Q. Now, in executing these orders, as I understand it, the Uhlmann Grain Company always made an actual transaction?

A. That's right.

Q. With another member of the Board of Trade?

A. Yes.

Q. Who, in turn was usually representing a customer?

A. Yes.

Q. But the transactions were dealt formally between you and the other member of the Board of Trade?

A. Yes.

Q. And each one of these firms stood behind that transaction?

A. Yes.

Q. You had a fund up with the clearing house, with the Board of Trade at Kansas City and in Chicago where the transactions were completed, and each one of your brokers in a purchase and sale transaction was behind that transaction itself?

A. Yes.

Q. And each of you was representing a principal, you representing these men in Carrollton and they their clients?

A. Yes. We have right now with the Board of Trade in

Chicago $420,000 guarantee fund, about what we owe them tonight in cash, if something should happen tonight.

Q. And you are required by the rules of the clearing house association in Chicago and Kansas City to keep a certain margin in cash or collateral up with the clearing house above what you owe them each night?

A. Just now it's over $400,000, the excess margin.

Q. In each one of these transactions that you executed in these cases here, was there an actual trade made between your customer through you and the other broker's customer through him?

A. There was.

* * * * * * *

[fol. 147] Q. And if either you or the other broker who carried out the orders of your principals wanted the actual name of the customer for whom he acted, did you, as a matter of fact, have a record of it so it could be shown and did the other broker have a record of it?

A. Yes.

Q. And that's required by the rules of the Board of Trade?

A. Yes.

Q. And you did that in each instance when you carried out these orders for these men here?

A. Yes."

Redirect examination:

The blackboard at Carrollton noted the quotations from Kansas City, Chicago, Minneapolis and Winnipeg; they were gotten over the wire from our office in Kansas City. They would not come direct from Chicago, they would be relayed in Kansas City. Winnipeg quotations were wired to Chicago, relayed there to Kansas City and then relayed to Carrollton. The Kansas City office was the central office. An order on the Kansas City Board of Trade was executed by one of our men going into the pit and buying or selling grain. There is always a trade and that is registered here in Kansas City.

These men were not speculating on the rise and fall of the market, they were simply trading on the difference between two markets.

"Q. You knew there was no delivery intended?
A. No, not necessarily, in fact some men—this particular case—but there is a great deal of grain actually delivered.
Q. But you know in this case there was no delivery?
A. They might have asked for delivery.
Q. But it was not asked?
A. No, it was not asked."

If these men could not have repaid us we would have advanced the full amount of the purchase or sale price. We wouldn't have taken any more chance than we could. The whole matter was in our hands. When we asked the banker and learned that some of these men were not very strong financially, we cut them down then. I could not remember who we cut out. When we cut them out we did not notify them, write them a letter.

I don't think I wrote many letters to those men in Carrollton. I might have written some, but I don't remember any and I know I did not write many. I wrote only on request.

I know what offers are in the grain trade. We execute those orders for other people. Offers are the same as puts [fol. 148] and calls; it's a technical expression. We did not deal in any puts and calls at Carrollton. I doubt if we dealt in any offers at Carrollton. (Counsel hands paper to witness.) That means, I presume there was in Winnipeg on the Board of Trade. That means that if they got $27.27, see, for selling 30 offers, which means that if the market would have reached a certain point on that day, we there would have been short 30,000 bushels of wheat; they would have to sell 30,000 bushels of wheat at a given price. That to an extent is a speculation. I read in a book a few months ago about offers, that it's the same principle like a life insurance company would insure a man. I would consider this was a business transaction in the way of an insurance company. Then the only actual transactions we had with the people at Carrollton was that they put up money as margins or as offers, and we got the money and then we closed out the transactions; where they had money coming to them we gave it to them. And the amount was ascertained by the fluctuations of the market and settled that way. Every transaction we had with any of these men was ascertained and determined in that exact way; and only

that way. As to the money we paid out for these men, they knew we were laying it out for them.

"Q. You yourself know of no request, verbal or in writing, by which a single one of these men asked you to pay out this money?

A. Because it isn't customary to get it in writing, but they knew it's a customary thing to pay that. They knew we had to pay that.

Q. How do you know they knew it?

A. Because they have traded all their life.

Q. How do you know that?

A. I have talked to these men; I have met them on the Board of Trade. Some of them come there yet."

The money we paid out for them, we paid to the clearing house. It was taken out of this margin that we keep up there all the time. That's the way it was paid. The commissions that I spoke about are—we get a fourth of a cent a bushel for executing the trade, which is $25.00 for each $10,000; about that. That is figured in the account we sued on. These notes were given in lieu of margins.

These men went to Chicago themselves to see Mr. Fred Uhlmann, the Dickinsons and an old gentleman, he and two other men went to Chicago themselves to see Fred Uhlmann, who is the President of the firm, and asked him to accept these notes in lieu of margins, because they didn't [fol. 149] want to draw the money out of the bank at that time, and they went up to Chicago themselves so they wouldn't have to take my word for it, because it's very unusual to do that. I knew that they wanted to give these notes; they gave them voluntarily. I wasn't present, but these men came back via Kansas City and told me exactly what they did. I did not ask them to give me a check. They said it would be a great convenience if we would take their notes and I looked them up and their references made me believe they were very well-to-do men. I do not know how many of these men sued are solvent.

"The Court: Mr. Jones, about how long will it take you?

Mr. Jones: That is kind of hard to tell. The direct examination of our witnesses will be short and as to the point as I can make it.

The Court: I am just wondering, in view of the general attitude, whether the testimony of one witness—one of the defendants—will cover each case. Your theory of the case is that the facts will run along about the same in each case. I wonder if we may agree that the other defendants called in their cases would testify to the same effect?

Mr. Jones: I think it could.

The Court: I just apprehend that the testimony will take such a course that that might be done.

Mr. Jones: I can say from our theory that it will take that exact course.

The Court: What do you say, Mr. Stinson?

Mr. Stinson: I don't want to object to something that the court suggests but I can see that these defendants, from what has gone before and what their counsel has said, are all going to rely on perhaps oral statements that have been made to them. They were not made to all of them all of the same character, and when one man testifies as to what he may think about it, I don't think it ought to reflect the situation of the others. My cross-examination will be as short and directly to the point as I can make it but I am not willing to agree that the testimony of one may be taken as the testimony of all.

The Court: I am not asking the parties to bind themselves. I am making the suggestion so that if it could be so agreed it will save time and shorten things up.

Mr. Jones: The points we rely on will be about the same with all of them. I will say this that it is true there were [fol. 150] some statements that will be testified to that were not made to all of them and in that case I would be glad to indicate."

Defendants offer in evidence Section 8 found on pages 13 and 14 of the rules and by-laws of the Board of Trade at Chicago relating to dealing in futures and bucket-shops.

(Here ensued a colloquy between counsel and the court, wherein it was agreed by counsel for both sides that the rules of these exchanges had been offered in evidence generally and that counsel for either side may direct attention to whatever portion or part thereof he desires.)

Section 8 of the Rules and By-Laws of the Chicago Board of Trade is as follows:

"Sec. 8. Any member of the Association who shall be interested or associated in business with, or who shall act as the representative of, or who shall knowingly execute any order or orders for the account of any organization, firm or individual engaged in the business of dealing in differences on the fluctuations in the market price of any commodity or corporate stock—without a bona fide purchase and sale of the article for an actual delivery; or who shall be a member of, or shall, in his own behalf, or as agent, directly or indirectly make, execute, or give any orders for a trade or transaction in or upon any bucketshop or any so-called exchange, wherein is conducted or permitted the business aforesaid, or who shall knowingly accept, either directly or indirectly, from any member of any so-called exchange, wherein is conducted or permitted the business aforesaid, any orders for trades or transactions to be executed in the Exchange Hall of this Association, shall be deemed guilty of unmercantile conduct, which renders him unworthy to be a member of the Association; and upon complaint to and conviction thereof by the Board of Directors, he shall be expelled from membership in the Association. Any member who shall, directly or indirectly, become or continue a member of, or in his own behalf or as agent make any trade upon, or otherwise contribute to the maintenance of, or accept any orders to be executed upon the Exchange of this Association from any member of a market or exchange in the city of Chicago permitting the distribution of its quotations covering the commodities dealt in upon the Exchange of this Association, without imposing and enforcing prohibitions upon the use of such quotations in bucketshops, such as are imposed by this Association upon its quotations, shall, upon complaint to, and conviction thereof by the Board of Directors, be expelled from membership in this Association.

[fol. 151] "All orders received by any member of this Association, firm or corporation doing business upon the Board of Trade of the City of Chicago, to buy or sell for future delivery any of the articles or commodities dealt

in upon the floor of the Exchange (except when in exchange for cash property) must be executed in the open market in the Exchange Hall during the hours of regular trading, and under no circumstances shall any member, firm or corporation assume to have executed any of such orders or any portion thereof by taking the trades, or any portion of any of them, for their own account, either directly or indirectly, in their own name or that of an employe, broker or other member of the Association. Any member convicted of violation of this rule by the Board of Directors shall be expelled.

"When any member, or any firm of which a member of this Association is a member, or any corporation of which a member is an officer, whether acting as principal or as agent, shall either directly or indirectly make or execute, or cause or permit to be forwarded for execution, upon any exchange or board of trade located outside of the City of Chicago, an order or a so-called 'put' or 'call,' or for any contract respecting the purchase or sale of grain or provisions for future delivery, when by the rules, regulations, customs or usages of such exchange or board of trade it is provided or permitted, or where the parties to such 'put,' 'call' or contract contemplate that such 'put,' 'call' or contract may be fulfilled or satisfied by the delivery of a warehouse receipt or receipts issued by a warehouse located in Chicago, such member, or such member of such firm, or such officer of such a corporation shall be deemed guilty of conduct which renders him unfit for membership in this Association, and upon conviction thereof he shall be expelled."

Defendants offer in evidence their Exhibit "D" being a list of customers at Carrollton. Plaintiff objects to the Exhibit for the reason that it does not tend to prove or disprove any issues in the case between plaintiff and these five defendants. Objection overruled, plaintiff excepting.

Said Exhibit "D" is in words and figures as follows:

[fol. 152] DEFENDANTS' EXHIBIT "D"

Statement

D Ex D HW

Kansas City, Mo., —— —, ——.

C. N. Office, Suspense to Uhlmann Grain Co., Grain Merchants, Dr.

		Due us
Missouri		
Carrollton	Leo Archibald	$814.25
Bosworth	Dr. Boss Brown	2,439.64
Clifton Hill	J. Marion Burton	1,653.00
Carrollton,	J. O. Busby	158.18
"	I. N. Calvert	3,886.20
"	Earl Cheesman	1,186.98
Boyard	T. H. Cramer	1,730.02
DeWitt	Crispin & Crispin	1,801.48
Carrollton	A. P. Dickson) Dickson	3,714.06
"	Joe Dickson) Bros.	3,632.25
"	C. R. Dickinson	782.27
"	S. P. Dickinson	2,415.52
"	Mrs. W. L. Dickinson	810.36
"	Mr. W. L. Dickinson	1,547.43
Tina	V. M. Dickinson	1,088.16
Chillicothe, Box 421	L. C. Girdner	76.96
Tina	Jno. M. Griffin	596.50
Carrollton	E. M. Grimes	743.09
Bosworth	C. G. Grossman	2,824.50
DeWitt	Geo. Hollister	684.52
Carrollton	J. W. Hollister	1,773.68
"	Hugh Huddleston	1,423.45
Wakenda	Huddleston Bros.	1,776.59
Carrollton	C. I. Jacobs	166.26
"	B. Joseph	1,056.24
"	Mrs. E. F. McClain	1,107.37
"	E. F. McClain	1,035.10
"	J. S. McKinney	1,010.19
Tina	Ernest Miller	3,106.43
Carrollton	H. R. Mobley	1,776.38
"	R. E. Mobley	1,795.26
Tina	Mrs. T. S. Mobley	251.37
"	Mr. T. S. Mobley	1,561.13
Carrollton	S. E. Mobley	1,901.78
"	L. A. Ransdell, c/o CN Office	1,043.87
LaPlata	F. K. Reyner	515.71
Clifton Hill	J. E. Richeson	665.24
Tina	B. M. Riggs	1,042.42
Bosworth	W. N. Riggs	332.63
Chillicothe	Dr. M. M. Russell	2,193.86
Carrollton	Walter Scott	51.65
Bosworth	Roy Stanley	1,333.25
Carrollton	Robt. Stout, Stout Motor Co.	1,325.60
"	R. A. Thompson	1,669.35
"	Joe Timmons	803.13
"	F. T. Ward	588.57
		$63,891.88

[fol. 153] Defendants offer their Exhibit "A," being a letter from the Uhlmann Grain Company addressed to R. A. Thompson at Carrollton.

Plaintiff objects to the offer for the reason that no letter addressed to anyone other than any of these defendants can have any bearing on the issues in this case.

Objection overruled, plaintiff excepting.

DEFENDANTS' EXHIBIT "A"

Plaintiff's Exhibit "A" is a letter on the letterhead of Uhlmann Grain Company, is dated Kansas City, Missouri, November 12, 1924, addressed to Mr. R. A. Thompson, Carrollton, Mo., signed Uhlmann Grain Company, by Paul Uhlmann, Vice-President, and is in words and figures as follows:

"We had a conversation this morning with Mr. McDonough and we believe that the proper thing to do is gradually reduce this Winnipeg November-Chicago December spread, and unless we hear from you to the contrary, we will reduce yours gradually, and do the very best we can for you.

We are certainly awfully sorry that we got off so badly on this spread, and it is really the first bad one we have had since we have been in business.

I still think that there is a good chance for improvement, and this spread only worked this way on account of manipulation in Winnipeg. But it is dangerous to wait until the last day, so for this reason, we recommend that you reduce it gradually.

Therefore, as stated above, we shall handle this for you the best we can, unless we hear from you to the contrary, and Mr. McDonough will keep you fully posted."

Defendants offer in evidence defendants' Exhibit "C," being a letter to I. N. Calvert from Uhlmann Grain Company. Said Exhibit is in words and figures as follows:

DEFENDANTS' EXHIBIT "C"

"Mr. I. N. Calvert, Carrollton, Missouri.

DEAR SIR: Hereto attached please find statement of your account which explains itself. We are, of course, awfully

sorry that this Winnipeg spread turned out so badly but assure you that we have given you at all times the very best advice we had. Would appreciate it if you would mail us a check upon receipt of this letter for this amount or if you cannot pay it all at once, write us how you can [fol. 154] pay us and you will find us very reasonable about it.

In other words, we want to continue to do business with you and we feel sure that we can help you make it back. If you want to make arrangements with us to pay a certain amount each month we shall be glad to handle the account in this manner for you provided you make a part payment upon receipt of this letter.

Respectfully yours, Uhlmann Grain Company, by Paul Uhlmann."

Said letter is dated November 13, 1924.

T. H. CRAMER testified for the defendant as follows:

My name is Thomas H. Cramer. I live north of Carrollton, Missouri. I was acquainted with E. S. McDonough who represented the Uhlmann Grain Company at Carrollton. I knew where the place of business was. It was in the basement of the Flowers Hotel. I called at that place while it was in operation there. I had some dealings with Mr. McDonough; I made some spreads. I mean by that we either bought or sold—usually Winnipeg against Chicago. If we bought Winnipeg we sold Chicago to the same amount. The maximum amount that I dealt in at any one time was 40,000 bushels bought; what they call a 40,000 bushel spread. During the time that McDonough was operating that business there, I made a lot of deals. They were not all spreads. I sold some corn. It was futures. About the time I made these deals I harvested some wheat, say during likely the month of July. I did not sell this wheat that I raised the way that I spoke of. I did not have any intention of doing that, or delivering the wheat I raised on any of these deals. In the year 1924, I might have had 700 or 800 bushels that I raised. I sold it to the Farmers Elevator Company. Uhlmann Grain

Company was not connected in any way with the sale of that wheat.

With reference to this wheat that I bought or sold, I did not intend to deliver the wheat in case of sale, that is, the actual wheat, and in case of purchase I did not intend to accept delivery. I had no place to put it, or money to pay for it. I was not financially able to pay for that wheat or accept it, and in case where I sold wheat I was not financially able to buy the wheat and take delivery of it. It was not intended to make delivery in case of sale [fol. 155] or to accept delivery in case of purchase; no delivery was intended.

I had conversation with McDonough in which he gave me advice about these deals. I met him there in the Spring, I think there at Tina, likely. He was explaining the proposition. I had never dealt on the Board and didn't know anything about it. He explained how they done these things. He was talking about a spread at that time. I don't remember what spread it was, probably Winnipeg or Chicago spread, I think, and I had heard of people, you understand, tapping the market and I wanted to get the details. He explained that you could buy on one market and sell on another and make some money. I would find out whether I made money or not by the rise and fall of the market. If the market went in our favor, you made money, and if it went the other way, you would lose money. After he made that explanation to me, well I says, "Mac, I don't want to get into anything I will be reliable for; I don't want to get in anything that will get me caught with a big chunk of wheat." He said, "I will take care of that, you don't need to worry. I will see that you get out of that before time for delivery and will make you some easy money." That was before I made any operation. I had some losses during the time I was trading. When I had these losses I had some conversation with McDonough about them. He asked for the margin. He said, "Oh, we have these losses. Keep on, and we will come out of it. It is a lead pipe cinch. We can't lose, we will make a bucketful of money. It will get right some of these days." When he asked for those margins, I put up as long as I could. I have made no preparation to receive or accept delivery of any of this grain I was dealing in. I made no preparation to deliver when I was on the selling side. Had no

intention of it. At the time I sold wheat, when I was on the selling side, I did not have any wheat except this 700 or 800 bushels. I presume you would say that McDonough called on me. I met him and he talked over—he explained the proposition. This occurred at various times and places. On one occasion I met McDonough in Tina. It wasn't at the place of business there in Carrollton. I presume McDonough was at Tina on that occasion to solicit business. He did talk about this business. He was there to explain the proposition to us fellows. I mean by that five or six, eight or ten, maybe, in there, in the office of the Farmers Warehouse Supply Company. I owned one-eighth interest in the Tina elevator. The elevator is rented and I have nothing to say about its operation. I had nothing to do with buying and shipping grain from that elevator. I [fol. 156] simply had an interest with other parties. The name of the corporation is Farmers Warehouse & Supply Company. I own stock in it. The fact is the owners of the elevator rented it to the Farmers Warehouse and Supply Company and they operated it.

I told McDonough I would not be able to take the wheat and pay for it. He said, "Sure, you don't want to carry this up to then." He said, "We will make some easy money and get out before time to deliver." I said, "Be sure we get out before the time to deliver."

"Q. Was there anything said to you as to the actual wheat that was bought or sold?

A. I told him I didn't want it. Sure."

I am not one of the defendants in these cases. But I have been sued in the State court. I am a stockholder in the Farmers Warehouse & Supply Company which operates the elevator at Tina. I am an officer. I am President. I am President of the corporation which operates this elevator at Tina. Its capacity is 8,000 bushels. I have been President of the company ever since it was organized something over ten years ago. I have never been active in conducting the business. The capital stock is $5,000.00, and I own $200.00.

I know nothing about the purchase and sale of grain futures on these exchanges, and did not in 1924 when I talked to McDonough. I did not know what hedging trans-

actions were. In my first talk with McDonough I told him I didn't want to get into anything that I would be reliable for.

"Q. What do you mean 'being reliable for'? What did you mean by that?

A. Accepting delivery on 40,000 bushels of Winnipeg wheat or to deliver 40,000 bushels of Chicago wheat."

I had a good many dealings with Mr. McDonough. When I made and entered into these transactions, I sometimes gave him an order. I did not do this always. He made deals for me or transactions were started for my account without my knowing anything about it; but I might explain that I didn't repudiate them and when he explained them I made more of the same.

"Q. Have you repudiated any since?

A. No sir."

* * * * * * *

"Q. Now, whenever any of those contracts were entered into between you and as you say, Mr. McDonough, that you [fol. 157] made a purchase, for instance, did you later make a sale against that purchase before delivery time came?

A. Yes, sir.

Q. Did that in every instance?

A. Always.

Q. Never did anything else?

A. No, sir.

Q. And when these purchases against sales were made they were made at your direction, were they?

A. Usually.

Q. And that was in accordance with your intention before you entered into these dealings, that was the way you intended to do it before, wasn't it?

A. What?

Q. That is to say, before the time of delivery arrived you were going to get rid of your contract, that is the way you intended to do when you first started to deal with McDonough?

A. That is the instructions I gave to him.

Q. And he carried them out, didn't he?
A. Yes, sir."

Redirect examination:

The trades I referred to when I said McDonough sometimes made them without orders from me were spreads; he made sales without my knowledge and consent, and afterwards told me about it. He gave me advice in connection with it and told me why he had. He explained the proposition of why one market was found to fall and the other market bound to raise, and led us to think we were bound to win and make a potful of money. I said, "Mac, if it looks so good as all that, we will take some more of it." I acted on his advice in those instances. Two or three times he came to my house to see me about these matters. I don't remember just what he said only in a general way. He discussed the market proposition and decided as to what we should do.

Amos Dickson testified for defendants as follows:

I live in Carrollton, Missouri. I have lived there 23 years. I was in the clothing business in 1924 at Carrollton. My brother was my associate. His name is Joe P. Dickson. He is one of the defendants in this case. I know where the Florence Hotel is there. I remember the Uhlmann Grain Company opening an office there. E. S. McDonough was in charge of it. I became acquainted with him. I learned from him that he was representing the Uhlmann Grain Company in the operation of that business. I speculated on the Board of Trade. I came to start it because he came in our place of business and solicited. I mean our store. He would tell about these trades or [fol. 158] spreads and how to make some easy money, and I told him I couldn't take care of any wheat at all. "Well," he said, "start in a small way," so he bought me 5,000 bushels and we understood there would be no delivery and I couldn't pay for it because at the time I was obligated at the bank. I couldn't take any wheat at all. I told him that. He said, "Alright, you will never have to take it." I bought 5,000 bushels. I don't remember what Board

of Trade he claimed to have bought it on. I continued trading about five months. The largest amount that I contracted for was about 40,000 bushels. We first bought 5,000 bushels when we first started to trade. It went down, and he said it would be alright, "We are going to make some easy money when it got a little lower," and we bought more, and finally we did make money, but later on we lost. How I came to deal in 40,000 bushels, he said, "Buy 5 or 10 more and it will go back up and you will make some good money." I understood I wasn't compelled or wasn't to receive the 40,000 bushels. That was from conversation between Mr. McDonough and me right from the start. I sold some wheat too. I was on both sides. In cases where I sold I was *was* not told to deliver the wheat. That was from an understanding between me and McDonough.

"Q. How was the—how was your winnings or losings to be ascertained?
A. The difference between the price of the market.
Q. The difference between the prices of the market?
A. Yes, sir.

There was no intention on my part at any time to accept delivery of wheat that I bought or make delivery of wheat that I sold. I have never been in any other business but the clothing business. I was never interested in any elevator. I am not a grower of wheat. I could not have made any preparations to accept delivery. I could not have done that. I would not have been financially able to have bought the wheat and paid for it. I was not financially able to accept delivery of the wheat I bought and pay for it. McDonough knew that absolutely. I told him. Told him I was obligated at the Carroll County Trust Company. I was obligated there at the time for $4,000.00. I wasn't worth that much. Not a fourth—about a fourth. At that time I was largely obligated to wholesale houses. I bought on credit. I explained that to McDonough, made it known to him.

"Q. You may state what reliance you placed on Mr. McDonough in this business about taking his advice?
[fol. 159] A. I placed it all in him because I knew nothing about it."

At that time I had never had any experience in the grain market. I had never speculated on the market before. I did not know what a spread was before he explained it to me. This explanation, in a brief way, was the education I got on the subject from McDonough. While this trading was going on, McDonough came to our place of business and said he had received some letters, and when the trades were going against us he advised us to stay in, and at times advised us to buy some more grain. As to these letters, he said he knew it would come out alright, and we would make some money. I sold large quantities as well as bought. McDonough did not tell me whom he bought from and when he sold he did not tell me who the buyer was. I never had any knowledge or information from McDonough or anyone else as to who was the purchaser or seller of the grain I dealt in. The only person I knew connected with the Uhlmann Grain Company, I operated through was McDonough. I was never at any time asked to deliver any of the grain I sold, or to accept delivery of any that I had bought. It was understood I wouldn't receive any. I remember McDonough quoted the advice of Paul Uhlmann about the last spread. He said we would make a lot of money and we couldn't lose. He came by the store and told me he had bought 5,000 bushels for me and it was sure going to be a dinger; he would certainly make some money out of it. I had not given him the order for that 5,000. He did that without my knowledge or consent. He made sales or closing of my accounts and acted with reference to my account without my knowledge or consent.

"Mr. Stinson: I move that line of testimony be stricken out. There is an admission those accounts are correct. It is going too far outside of these pleadings, that the Uhlmann Grain Company did anything out of the knowledge of these defendants. There is no such thing pending.

The Court: There was no plea of failure of consideration, or that the contracts were unauthorized. Your plea is that they were void because they were illegal.

Mr. Jones: That is true, but we pleaded as gambling and my idea is that any evidence that will interpret the contract to that respect will be admissible.

The Court: If you think it will bear on that question, the court will admit it.

Mr. Jones: That is the purpose of it, your honor.
[fol. 160] The Court: Upon the theory that there is no consideration, that is to say, it was an unauthorized contract. The court will admit it upon the theory——
Mr. Jones: That is the theory I am offering it upon, your honor.
The Court: Very well; subject to—that is, upon the theory advanced by counsel, it will be admitted.

(To which action and ruling of the court the plaintiff, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jones: It goes to tend to establish the operation of a bucket shop in violation of a written contract.
The Court: And for no other purpose."

As to my statement that he made trades for my account without my knowledge or consent, I refer to the last trade. After he had purchased, he came by our place of business and told me he had purchased this for me. We talked about it and I asked him if he was sure it would make some money, and he said he knew it would. It was bound to make money.

Cross-examination:

On my first 5,000 bushels of wheat purchased, I did not put up a margin. I put margins up from time to time afterwards. When these transactions were closed out, I very seldom received any checks. I received some. I do not know as a matter of fact that I received more than I paid out. I never tried to figure it out. I do not know, as a matter of fact, that I received about $500.00 more than I paid out in these transactions. I won't say I did not.

I never traded on the market before until I had this conversation with McDonough and I began dealing with him then. He did not explain at the time what it meant by "buying a future." That is when I bought my first 5,000 bushels. I never understood what a future was, knew nothing about it at all, but I did have a distinct understanding with him at the time these transactions were initiated that I was never going to take delivery on what I bought. I insisted upon that. And I insisted in this first conversation that if I contracted to sell anything that I was never

going to deliver it, absolutely, never deliver. I remember that I had that conversation with him the first time I talked to him. He said he would take care of that. He did not explain it to me. I insisted upon not being required to take [fol. 161] delivery because I knew I wouldn't take that. I knew that if I did not take delivery it would be changed over to some other month.

"Q. Now, after each one of these transactions was closed, did you get a written confirmation from the Uhlmann Grain Company?

A. At the close.

Q. Well, if you would give an order to buy, or give an order to sell, did you get a written confirmation from the Uhlmann Grain Company, did you read that over?

A. Yes, sir.

Q. Did you know what you read?

A. Sometimes I did and sometimes I didn't."

(Counsel here hands paper to witness.)

I don't remember whether I got this. That is my name on there. The date is March 31, 1924. I don't remember when I began trading. It was in the Spring of 1924. I don't remember whether the first transaction was March 28, 1924. It was sometime in the Spring.

"Q. Did you understand if you gave Mr.—or gave an order for the purchase of so much grain on market and for the sale of an equal amount of grain on another——

A. Yes, sir.

Q. Did you understand that the Uhlmann Grain Company was to execute your orders for you?

A. Yes, sir.

Q. And act as your agent?

A. Yes, sir.

Q. In making these purchases?

A. Yes, sir.

Q. Either in Winnipeg or in Chicago, or both?

A. Yes, sir.

Q. And that these transactions were to be consummated on those markets; you understood that, Mr. Dickson?

A. Yes, sir.

Q. Then you understood that the contract to sell was the contract whereby the Uhlmann Grain Company, acting for

you, agreed that during a certain month in the future that you would sell so many bushels of wheat?

A. Yes, sir.

Q. On this market?

A. Yes, sir."

I did not understand that where I was seller, or entered into a contract to sell, I had the option of making delivery [fol. 162] any time during that month. There was never no delivery at all. We never make any delivery.

"Q. Didn't I understand you to say McDonough told you you would get out before the delivery month?

A. He said he would take care of that.

Q. Did you understand that was what would happen?

A. Yes, sir."

I knew nothing about the matter. I took his word for it that he would take care of it. I knew nothing about trading on the Board of Trade at all. He said he would execute the order on the Board of Trade for me. He did not tell me the way it would be handled. I knew nothing about it, as I said before.

"Q. I want to know what he told you. Did he tell you the deals would be handled by the Uhlmann Grain Company on those boards of trade?

A. Yes, sir.

Q. And you also understood that before the delivery month came around, either on the purchase or sale, you could get out of it?

A. Yes, sir.

Q. And how did you understand you were to get out of it; out of delivering?

A. That was up to him.

Q. That was up to him?

A. Yes, sir. He was the main guy in all of it.

Q. So that as far as these transactions were concerned, and every one of them, you weren't to have anything to say if you bought, for instance, wheat for future delivery on the Chicago market as to when it was to be sold. You weren't to have anything to say about that at all?

A. Sometimes I did and sometimes I didn't.

Q. When did you, and when didn't you?

A. At times he would use his own pleasure; other times he would call up and say it was a good time to sell, or that we had too much.

Q. Then you would tell him to go ahead?

A. He had already done it.

Q. He made sales sometimes without your knowing it, and purchases?

A. Yes, sir.

Q. And sometimes you gave him the instructions?

A. Yes, sir."

I did not watch the market. He would tell us when to sell and when to buy. I didn't exercise my own judgment at any time at all. I knew nothing about it. That is, I didn't exercise my judgment in the matter much, just some.

[fol. 163] "Q. Now, directing your attention to this language of this confirmation: "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor." Did you read that?

A. I read that on there where it reserved the right to close you out when the margin run out, and they didn't do that until the last deal; no, sir.

Q. Well, did you read just that part of it? Is that all you read, or did you read all of it?

A. That was the main part to me.

Q. I didn't ask you what the main part to you was. I asked you if you read—what you read. Did you read all of it?

A. I don't remember.

Q. "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor." Did you read that?

A. I expect so."

I never paid any attention to the language of these confirmations, but those right there. I forgot whether I read the red one or the yellow one. Mine was black and white, and red and white.

"Q. Which did you read, both of them?

A. I read both of them."

I read this language:

"All purchasers and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the chamber of commerce or board of trade where the trades are made, and the rules, regulations and requirements of the board of directors and the amendments that may be made thereto."

And to these transactions which he executed for me without an order, he was the main guy; I did not tell him beforehand to use his own judgment as to when any transactions started for me should be closed out.

"Q. Did you protest against his doing this for you?
A. I asked if he thought it would be all right, and he said, 'Yes.'
Q. You mean each time he closed out a transaction for you without your knowledge, you asked if he thought that was the thing to do, and he said, 'Yes'?
A. Yes.
Q. And you agreed to it?
A. Yes.
[fol. 164] Q. So there were a lot of those transactions that were handled either because you told him what to do, or acquiesced in what he did for you?
A. I suppose so.
Q. Every one of those transactions he handled for you in the way you have described, was done either because you told him beforehand to close it out, or because he closed it out and later you told him it was all right?
A. Yes, sir."

I did not watch the market. I never was in the office until the market went against us and he called us down there one evening.

I knew I wouldn't have to take any wheat delivery because I couldn't pay for it. I don't remember how I would get out of it, but he said he would take care of it and I left it up to him. He told me I wouldn't have to take delivery, he would take care of it. I had heard him talking before, and if you didn't close out when the month was up, you would change over in some other market. I have heard him tell different gentlement that; he would change it over. I don't remember when I heard that told.

"Q. Isn't that a fact you had purchased in Winnipeg for October and they were changed to November?

A. On the last trade you are speaking of?

Q. Yes, sir.

A. It was changed over without our consent."

I left it to him to get us out of things before the delivery month arrived.

"Q. I see. Now, if I understand you correctly, your testimony is that you didn't know when you were dealing with Mr. McDonough there, how, if you wanted to get out of the delivery that you had contracted to take for a given month, you didn't know how that could be accomplished?

A. I told you I heard him tell other gentlemen it would be changed. If it run up to the last of the month, say if it had been made the last of April, it would be changed over to some other month.

Q. And is that the way he took care of you?

A. Well, I thought—I didn't believe up until the last trade he ever changed any, and then he changed without my consent.

Q. Then up to the last trade he never did take care of you in the way you thought you were being taken care of. He [fol. 165] didn't make any change of delivery months until the last one, and that was done without your consent?

A. I don't remember.

Q. Didn't you just so testify? What is your recollection about it?

A. I said this: That on the last deal, that he did change us over into another month without our consent.

Q. Up to the last deal he never did change you over to another month?

A. I don't remember.

Q. I hand you your account of all your transactions there, and I will get you to look at this and show me where Mr. McDonough ever changed you over to any month in any of these transactions.

A. I don't know anything about this.

Q. You don't know anything about that?

A. No, sir.

Q. Don't you know, as a matter of fact, he never did change you over to any other month in any of these transactions except the last one?

A. I don't know."

As to whether I always sold out before the delivery month arrived, that was up to him. When payment came good, or if it was bad, he would suggest selling or getting out.

"Q. I want to know whether or not when you exercised your own judgment, which you say you sometimes did, whether you always exercised that judgment by cancelling out or trading out, and subsequently selling before the delivery month arrived?

A. I think he got us out before that time.

Q. You say you got yourself out sometimes.

A. Sometimes I would buy some grain and in a very few days it would go up and of course we would sell out and take our profit.

Q. So that you understood then, that when you bought grain and the price of it went up, that you could sell it then and take a profit, didn't you?

A. And if it went down we would take a loss.

Q. And you understood you were buying and selling grain for future delivery, didn't you?

A. Yes. But there was to be no delivery.

Q. Why did you insist upon there being no delivery?

A. I like I told you, I couldn't take care of it.

[fol. 166] Q. Why did you think you were having to insist upon not taking delivery under these contracts? What made you think to ask Mr. McDonough to be sure you wouldn't have to take delivery?

A. I told him I could not take care of it, and he said he would take care of it.

Q. In other words, Mr. McDonough gave you to understand when you made a contract to purchase wheat during a certain month, he would take care of it and sell it for you before the time arrived?

A. I suppose.

Q. That is what you did in every one of these transactions except the last one, which you say was against your consent. You sold out against protest and bought against protest?

A. He would advise us what to do.

Q. Isn't it a fact that is what you did?

A. I said he advised us what to do.

Q. I didn't ask what his advice was. I am asking you if it isn't a fact that is what you did before the delivery month

arrived, you sold out your purchase and you bought out your sales?

A. I suppose it was.

Q. And that is what you intended to do all along in all of these dealings that you had?

A. Sell out without delivery?

Q. Yes, sir; and buy out without a purchase before the time came around, and that is what you did whenever you exercised your own judgment, didn't you?

A. I suppose.

Q. Now, I want you to tell the court whether you got these confirmations, and these slips here, after every transaction that was initiated was closed out?

A. Yes, sir.

Q. Did you ever make any objection to any of them?

A. I don't believe so.

Q. And whenever you made a profit on these transactions, you took down your profit?

A. And glad to get it back as long as I had it."

Redirect examination:

On the first deal I purchased I didn't put up a margin, but I did during the time. I put the money up at Carrollton, Missouri. I gave it to E. S. McDonough. It was given in connection with the transactions I was carrying on. All of the transactions and deals I had with McDonough were made in the town of Carrollton, Missouri, and nowhere else. I never transmitted any money to the Uhlmann Grain Com- [fol. 167] pany at Chicago. All the transactions I had and all the money I paid was right at Carrollton.

At the time we began these operations I did not know in what way or manner these trades were made on the Board of Trade. I do not know to this day how they were made by the Uhlmann Grain Company, only just from what I have heard in the court room. I got these statements, but they did not tell me how it was done. At the time I gave my order I did not know how they were going to be executed. I suppose selling short is when you haven't got it. I did not know how these operations were carried on at the time.

(At the conclusion of the testimony of this witness, the following occurred:)

"Mr. S. J. Jones: It is stipulated and agreed that defendants I. N. Calvert, Charles T. Dickson, Ernest Miller and Joe Dickson, if called and sworn as witnesses would deliver the same testimony as was delivered by A. P. Dickson with reference to their transactions with the Uhlmann Grain Company at Carrollton, Missouri, during the year 1924 and involved in the present cases now against them in this court and under consideration, of course, the court will so consider the testimony.

The Court: Now, as I understand it, that is agreeable to plaintiff?

Mr. Stinson: Yes, sir; agreeable to plaintiff."

I. N. Calvert testified for the defendants as follows:

I live in Carrollton, Missouri. Have lived there about 18 years. Am fairly well acquainted in the county. I lived there in 1924. I was acquainted with Leo Archibald at that time. He was engaged in some farming and in the automobile business some. At that time he was successful in the automobile business.

(At this point counsel for plaintiff and for defendants agreed that counsel for defendants might state the occupation of certain persons in Carrollton, plaintiff's counsel objecting to the materiality of it, but conceding the correctness of the statement. Here counsel for defendants dictated the following into the record.)

"Mr. S. J. Jones: Leo Archibald at the time was engaged in business in the town of Carrollton. Dr. Boss Brown, at Boston, Mo. I will just pass up those I don't know. J. O. [fol. 168] Busby at that time was running a small country store 9 miles east of Carrollton. I. N. Calvert was an ice dealer. Earl Cheesman was an employee of the Carrollton Republican, a publishing house at Carrollton. Crosden & Crosden were operating a small elevator at that time. C. R. Dickson was a farmer. S. P. Dickson, a farmer; Mrs. W. L. Dickson, a farmer's wife; W. L. Dickson, farmer; D. L. Dickson, farmer; John M. Griffin, a farmer; I don't know the next man; C. G. Grossman, insurance agent of Boston; George Hollister, a farmer east of Carrollton; J. W. Hollister, insurance agent at Carrollton; Hugh Huddleston,

clothing business at that time, but now at some other town; Huddleston Brothers, farmers; C. I. Jacobs, no special occupation; C. Joseph, an employee of the Prairie Pipe Line Company; Mrs. E. S. McLean, wife of laundryman; E. S. McLean, laundryman; Ernest Miller, farmer; H. R. Mosley, farmer; R. E. Mosley, farmer; Mrs. C. S. Mosley, farmer's wife—no, just housewife; C. S. Mosley, manager of the Farmers' Elevator in Tina, Mo.; S. E. Mosley, farmer; Walter Scott, no occupation; Ray Dameron, farmer; Robert Stout, farmer; Ray A. Thompson—don't know him—traveling salesman; Joe Kenman, works for undertaker."

C. T. Dickson testified for the defendant as follows:

I live south of Tina, Missouri, fourteen miles from Carrollton. I am a farmer. I signed these notes that are sued on in this case. I had a conversation in Chicago with Mr. Fred Uhlmann about my state of the account with Uhlmann Grain Company. We gave these notes because we put up margin until we couldn't raise any more money, and McDonough advised us to go to see Fred Uhlmann at Chicago and make some arrangements to keep on trading. We went, and he told us to give our notes and we would keep on trading until we traded these notes and it never would cost us any money—trade it out.

(On motion of plaintiff's counsel the last part of the answer was stricken out. Later the testimony was admitted with the proviso that it was not for the purpose of challenging the account itself.)

I gave the note after I had this talk with Mr. Uhlmann. We came home and was home a day or two, I don't just remember, a night or two after that Mac came out and we gave the notes. I mean by Mac, McDonough, the Uhlmann Grain Company man at Carrollton. He came out to Tina to [fol. 169] get us to sign these notes. We signed them and delivered them to him. We were behind at the time and had sustained some loss. These notes were given for more than we were behind, way yonder. We kept on trading, just gave

the notes and had them credited to go on trading and get out of this thing.

"Q. After you gave the note what happened?
A. Never gave us any trade.
Q. Closed you out then?
A. Yes, we was closed out. I don't know whether it was right then or not.
Q. There were no more trades?
A. After he got our notes that ended it. I tried to make another trade with Mac on the way home."

(On objection of counsel for plaintiff that the correctness of the account sued on had not been challenged and had been admitted in open court by defendants' counsel, it was stated by defendants' counsel that the purpose of the offer was merely for its materiality, if any, on the question of the legality or illegality of the transaction.)

Cross-examination:

Tom Cramer went with me to Chicago at the time we went up there. We had sustained losses and had no money to pay up. At that time I don't reckon we had any margins up or we wouldn't have had to went. We went there to settle this thing some way. We wasn't on the beat. None of us were aiming to beat it. We went up there to get a credit until we could get out of this fraud.

"Q. In other words, you went up there for the purpose of getting Mr. Fred Uhlmann to let you give notes instead of cash?
A. That is what we done.
Q. He didn't tell you if you gave those notes if you sustained any greater loss that you wouldn't have to pay them?
A. He said we wouldn't get into any more losses. If we did we would get into another deal and work it out.
Q. In other words, when you left Chicago you had an idea you could give these notes in lieu of margin and that is what you were to give them for, in lieu of cash?
A. Yes."

When we left Chicago he made us believe that he was guaranteeing we wouldn't sustain any more losses. We believed then we couldn't possibly sustain any loss; that is

the idea them people gave us at the time, was that we would never lose any money.

[fol. 170] "Q. And that is why you went into this thing, because you understood by getting into it you could make some money and you couldn't lose anything?
A. Yes."

I am positively sure we did not get to make any more trades after these notes were given. These notes were signed the night they were wrote up. They are dated October 8, 1924. McDonough wrote them right there in my son's house, and we signed them, I think, at the time McDonough wrote them.

(At this point counsel for plaintiff called the court's attention to the fact that these notes were dated October 8, 1924.)

These notes were given for Mr. S. T. Dickinson. He is my son. I have four sons. These notes were given for three of them. That boy and me traded together, but we were trading in his name.

My son and I, when we were trading in his name, got these slips after the trades were made; I reckon we did.

I do not remember that Exhibits 32, and 32-a to f, inclusive, show of a trade being made for S. P. Dickinson on October 16, 1924; but I don't deny it. I do not know whether we made a trade, S. P. Dickinson made a trade with Uhlmann Grain Company on October 16, 1924. I don't know whether when we went to Chicago we had open contracts for the sale of October Winnipeg wheat. I don't know whether we had some open contracts. I do not remember whether anything was said in Chicago about transferring our October contract to November, and making new ones. I remember that Fred Uhlmann told us if we didn't get out of this debt on that trade we was in, we would get into another one, and one that would work. I don't think we got out of our October spreads and into new ones. I don't think that is what he said he would do for us.

"Q. Is that what he agreed to do?
A. Yes.
Q. Is that what you wanted him to do?
A. We wanted to get out of this debt.

Q. And you wanted to get out of this October spread and get into a November spread?

A. I didn't expect that—we wanted to work out—I don't know what we wanted to do."

O. W. Rowe, recalled as a witness for the defendants, testified further as follows:

I have ascertained the number of bushels of wheat these parties bought on the Winnipeg market. I. N. Calvert had [fol. 171] 200,000 bushels of Winnipeg. 30,000 at Minneapolis and 10,000 at Kansas City. Joe Dickson had 175 of the October Winnipeg. I mean by that the whole time. At Minneapolis 55,000. None in Kansas City. Calvert had 401,000 bushels at Chicago. Joe Dickson had 355 at Chicago. A. P. Dickson had 165 of the Winnipeg, 340,000 of Chicago, 50,000 bushels Minneapolis. Ernest Miller had 220,000 Winnipeg, 280,000 bushels at Chicago and 40,000 Minneapolis. S. B. Dickinson had 265 Winnipeg, 320 Chicago, 20,000 bushels Minneapolis. W. L. Dickinson had 90,000 bushels Winnipeg, 115,000 Chicago, 10 Minneapolis; G. R. Dickinson had 20,000 bushels Winnipeg, 50,000 bushels Chicago.

These transactions are totals and they go approximately over a period of a year.

These five accounts were the largest accounts we had. They all dealt in larger amounts than all the rest of them combined. I could not estimate the total amount dealt in by all of our Carrollton customers during that period.

Recross-examination:

These dealings about which I have just testified extended over a period of ten or eleven months. I would say that the largest amount dealt in by any of them at any one time would be not more than 75,000 bushels.

From an examination of these P. and S.'s before me, I can testify that it is a fact that subsequent to the 8th of October, 1924, all of these defendants had transactions with the Uhlmann Grain Company. All of these accounts were closed out some time in November, 1924. If Mr. Dickinson testified there were no trades ever made subsequent to

that time, he is mistaken, the records show he is mistaken. This 10,000 bushels of wheat Mr. Calvert trade- in in Kansas City showed a profit of $1,000 and no claim is being made by plaintiff for that.

"Q. Now, I will ask you whether or not you have gone over all of these P. and S's and whether or not you can state it to be the fact that in each one of the transactions carried on by each one of the defendants, and in every one of the transactions involved in these five suits, with the exception of the very last one, I understand the Uhlmann Grain Company closed out itself, is that it?

A. That is correct, yes.

[fol. 172] Q. With the exception of the last one, I will ask you whether or not each transaction carried on, executed by each defendant, that before every delivery month against which a purchase or sale was made, that the transaction was closed out, if it were a sale, by a purchase; and if it were a purchase, by a sale, before the time arrived when it would be necessary to take the purchase or make the delivery?

A. That is correct. With the exception of the item—the Winnipeg October being changed over to the November, on all previous transactions before that they were closed out before actual delivery was made.

Q. And closed out by the defendants themselves?

A. Yes, sir."

I know what happened when these October sales on Winnipeg were transferred to November; I know what occurred.

"A. The accounts all were short for Winnipeg October and long on Chicago December at that time and about the middle of the month down—or the first part to the middle of the month, I would say, the Winnipeg October wheat, which the customers were short, was purchased, and at the same time of the purchase the November was sold in Winnipeg. In other words, bought in the short Winnipeg October and sold the November wheat there against which they were short October. Instead of being short in Winnipeg October they were short Winnipeg November and the other side stayed exactly as it was.

Q. That is to say, the Chicago December they had agreements to sell in October, they had agreements to buy Chicago wheat in December?

A. That is correct.

Q. You say about the middle of October the sales in Winnipeg were closed and purchases—or sales were made for November delivery instead of October?

A. Yes, sir."

The term "option" in connection with trading is merely meant for the seller and the seller only. The seller has the option of making delivery during any day in that month. That is the rule under the rules and practices of all of the Boards of Trade. So that these men who had agreements to sell October Winnipeg wheat had the option in October of making delivery any time in that month up to the last day of the month. The time was getting close when they would be required to deliver or fail to deliver their agreements to sell October wheat. That is the time these gentlemen went to Chicago and it was closed out, these October agreements to sell Winnipeg wheat were closed out by offsetting purchases; and new options on Winnipeg wheat [fols. 173 & 174] were taken for the sale of November wheat, and that was after these notes were executed, after the dates of these notes.

Redirect examination:

I don't know whether these last closeouts were at the direction of these defendants or not. If I testified these defendants gave direct orders, I was mistaken. Their action was unknown to me personally.

The account of Dickson was closed sometime after these notes were given. According to this sale bill, beginning October 6th, 1924, there was some grain bought and sold on this account, and it was closed out. On the 16th of October, the short Winnipeg October was bought in and at the same time, on the same day, the Winnipeg November was sold against the purchase of this October, and that is an account of the transaction.

DEFENDANTS' EXHIBIT "F"

Defendants' Exhibit "F" is an accounting of purchase and sale of 10 Chicago December wheat. There is a debit

on this one of $1,170.03. That means he lost that much. Both transactions were on the same day. The Kansas City was bought and the Chicago was sold on the same day. That is what I mean. Taking the two transactions together, Mr. Calvert was behind a little.

DEFENDANTS' EXHIBIT "G"

Defendants' Exhibit "G" is the final account rendered to Mr. Calvert. On October 1, his balance was a credit of $1,223.74, but the account was closed on the 8th of November and showed him a loss of $3,886.20. In making up that final accounting, this Kansas City trade was embraced in it.

Defendants' Exhibit "E" is in words and figures as follows:

DEFENDANT'S EXHIBIT "E"

UHLMANN GRAIN
GRAIN MERCHANTS

No. ~~3825~~ 5823

ACCOUNT PURCHASE AND SALE OF 10 Prg Nov W & N

For Account and Risk of Ernest Miller

BOUGHT — SOLD Jno Mo

Date	Quan'y	Commodity	Price	Cost	Date	Quan'y	Commodity	Price	Proceeds
11 17	10	NW	161¾	16 43 75	10	16 10	NW	163	16 30 00
							DUPLICATE		
		Commission		25 00					
		Stamp Tax		60					
		Gain		130 65			Loss		
				16 30 00					16 30 00

E. & O. E.

To Cr 130 65

Kansas City, Mo., 11-17 1926 Pros Con Exchg 2 16

Form 10 Net Cr 130 49

UHLMANN GRAIN COMPANY

FRED UHLMANN, PRESIDENT
PAUL UHLMANN, VICE-PRESIDENT
RICHARD UHLMANN, SEC'Y. & TREAS

338 BOARD OF TRADE

KANSAS CITY, MO.

No. ~~2016~~

11/12 1924

Ernest Miller
Lima Mo

wpg

DUPLICATE

We have this day bought for your account, at ~~Chicago, Ill.~~

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

Quantity	Delivery	Article	Price	Bought of	Address
10	W	W	161 1/8-1/4	wpg	

We do not consider orders open from one day to next, unless by special instructions.

Form 43

UHLMANN GRAIN COMPANY

K. & O. E.

BY AB

UHLMANN GRAIN COMPANY

FRED UHLMANN, PRESIDENT
PAUL UHLMANN, VICE-PRESIDENT
RICHARD UHLMANN, SEC'Y. & TREAS

338 BOARD OF TRADE

KANSAS CITY, MO. No

10/16 1924

Ernest Miller
Ina Mo

DUPLICATE

We have this day sold for your account, at ~~Chicago, Ill.~~ wpg

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as "The Future Trading Act."

Quantity	Delivery	Article	Price	Sold to	Address
10	N	W	163	wpg	

We do not consider orders open from one day to next, unless by special instructions.

Form 22

UHLMANN GRAIN COMPANY

E. & O. E.

BY AB

[fol. 181] (NOTE.—Defendants' Exhibits "F" and "G" are missing.)

Recross-examination:

In making up the accounting, the Kansas City transaction showed a credit of $1,095 and some cents, so that in this final accounting the Kansas City deal showed a credit and not a debit to Mr. Calvert. The credit of that amount of money, $1,095 was placed to his credit in his account. On the same day that the Kansas City wheat was bought, an equal amount of Chicago wheat was sold. The transactions were closed out at the same time. The Kansas City transaction resulted in a profit of that much money. Credit is given on the final account for that.

A. T. Dickson, who testified in this case, took out more money in his dealing than he paid out. We sent him more money than he gave us in margins by $500.00. The same is true of some of the other defendants.

Redirect examination:

These commissions weren't due until the trade was closed out. The Uhlmann Grain Company never charged a commission on any sale that wasn't completed. Or on a sale that wasn't balanced by a corresponding purchase. In other words, the trade must be closed before we got our commission on the deal. The last trades were transferred from one month to the next month following, in Winnipeg. They were finally closed out. All of them were closed not later than November, 1924—the last of November, 1924.

Recross-examination:

They were closed the latter part of November, the 23rd or 25th.

The Uhlmann Grain Company closed out these October transactions and made the November transactions in the same way the others were made with these defendants. Uhlmann Grain Company stood behind the deals themselves, and in these transactions some of these defendants had notes up instead of cash. Others had no margins at all. The Uhlmann Grain Company were carrying those on its own responsibility and sustained these losses in these last transactions.

Redirect examination:

With reference to Mr. Dickinson's account, they were existing trades and transferred to November. They were [fol. 182] closed out the latter part of November. The November trade was new trade entirely. It was not the same trade as the October trade. Their short interest in October in Winnipeg was bought in at the same time the November was sold. The November was a new trade. The October was bought in. They were short November in Winnipeg and they were long December, and in that December the short October wheat in Winnipeg was bought in by a like amount Winnipeg and at the same time the November, which would be a new trade, was sold. These October trades got into November in this way. The November Winnipeg against the sale of Winnipeg November. They were closed out at the same time.

(Plaintiff's counsel admits that at that time in 1924 the population of Carrollton was about 3,200.)

These P. and S.'s, were sent to each of these defendants immediately after there was a purchase which had been closed out by a sale. They were notified of every transaction made for their account. That is what these P. and S.'s, are, they were made at the close of the two transactions in each instance for these defendants, every one of them, and sent through the mail from Kansas City.

"Mr. S. J. Jones: The understanding is that the contract was shown on those bills or whatever you call them, both on the white ones and the red ones, they have all been admitted in evidence.

Now, I move at this time to exclude, I think it is Exhibit 1, purporting to be the telegram relating to sale, for the reason that it does not connect the defendants with it, no evidence in the case bearing on any issue in the case. I am referring to the matter your honor overruled, at the time, a ruling that I could exclude it.

The Court: The motion will be denied.

Mr. S. J. Jones: I move to exclude that part of witness Hardy, relating to his testimony before the Congressional Commission at the time the Congress had their considera-

tion for grain futures for the reason it is incompetent and throws no light upon the case, not binding upon the defendants.

The Court: The motion will be denied, because he qualified as a grain expert and the court accepted his testimony, as he will do, to elucidate the meaning of a lot of terms involved in this case.

[fol. 183] Mr. Righter: The defendants move that all the exhibits and all of the testimony which were introduced with reference to the specimen or sample transactions which were claimed to have been characteristic transactions on the Board of Trade of the Uhlmann Grain Company being excluded on the ground for the reason that there has been no showing in this case that the transactions which were carried or purported to have been carried on for these defendants were carried on in similar manner.

The Court: The motion is denied."

This closed the defendants' case and plaintiff offered no rebuttal; but at the close of the case asked leave to amend the petition by asking for interest due on the balance to plaintiff. It was agreed that the records should show such an interlineation without its being rewritten.

Defendants' Motion for Judgment

At the close of all of the evidence, counsel for defendants moved the Court to declare the law to be that under the pleadings and Statutes, the plaintiff is not entitled to recover against any of the defendants. The motion was denied, and exception taken.

(This was all of the testimony.)

Plaintiff's Requested Findings of Fact

Thereafter, and before the entry of the judgment of the Court, and pursuant to authority given by the Court, the plaintiff requested the Court in writing to make the following findings of fact:

1. In all the transactions involved in these suits the plaintiff acted as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff enter into any other than a brokerage contract with any defendant.

2. Every purchase and sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits was executed in Missouri.

3. Every transaction was a contract of purchase or sale of grain for future delivery, executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the other party to the transaction, either acting for himself or an undisclosed principal, was also a clearing member.

[fol. 184] 4. Every contract of purchase or sale executed by plaintiff for defendants was carried out in conformity and in compliance with the rules of the particular grain exchange on which it was closed.

5. Every contract executed by plaintiff on behalf of defendants actually called for the purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, offsetting or ringing purchases or sales were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purchase or sale, was offset by a sale or purchase executed in the same manner as the initiating purchase or sale. Every purchase or sale was closed out by an offsetting transaction before the delivery time arrived and was executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing House of each Grain Exchange as security for the performance of its contracts. All transactions of purchase and sale executed by plaintiff for defendants were contracted for on the Exchange in the name of plaintiff, plaintiff was responsible for their performance, and in each instance where the sale price was for an amount less than the purchase price, plaintiff acting as defendants' broker paid the difference to the Clearing House of the Exchange upon which the transactions were carried out. In none of the transactions did plaintiff profit or lose by a loss or profit to defendants. In all of them it acted only as a broker for defendants.

8. None of the purchases or sales were executed at Carrollton, Missouri. Orders were given by defendants from time to time at Carrollton to plaintiff's local office for execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were accepted by plaintiff at Carrollton. All of them were telegraphed to [fol. 185] Kansas City for acceptance or rejection, and if accepted, were carried out by plaintiff by telegraphic instructions emanating from Kansas City and by written confirmation of the execution of the order, which written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrollton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all "P & S's," all confirmations of the execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely received and tranmitted orders of its customers to Kansas City for execution on the Grain Exchanges designated in the customer's order.

10. None of the transactions of purchase and sale executed by plaintiff for defendant was a fictitious transaction. All of them were actually executed between clearing members of the Exchange where consummated, one of whom would be plaintiff acting for defendant.

11. In none of the transactions did plaintiff bet with its customer or take the other side of the deal.

12. In no transactions did plaintiff and defendant settle the gain or loss of defendant other than by ascertaining the actual difference between the price at which the commodity was bought and that at which it was sold. In no transaction of purchase or sale did plaintiff and defendant fix a fictitious profit or loss to defendant by an ascertainment of the difference between the contract price and the market price on the day fixed for delivery.

13. In each transaction, after an order to sell or purchase was executed by plaintiff in behalf of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant.

Every written confirmation recited that "All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

There was no evidence that plaintiff's local agent at Carrollton had any authority to make a different agreement or contract with the defendants other than the apparent authority that may have been conferred upon him by the [fol. 186] establishment by plaintiff of the Carrollton office and the putting of its representative in charge thereof.

14. At all the times in question the Chicago and Minneapolis Boards of Trade had been designated by the Secretary of Agriculture of the United States as Contract Markets. At all such times the written records and written reports required by the Grain Futures Act and the rules and regulations of the Department of Agriculture were made by the plaintiff and the other clearing member of the transaction, and the contracts of purchase and/or sale were executed with the formalities required by the Grain Futures Act and the Grain Futures Administration of the Department of Agriculture.

15. In every contract entered into by plaintiff in behalf of defendants, plaintiff was legally obligated to perform the written terms thereof, and every such contract was actually executed and was evidenced by a written memorandum entered into between the clearing members of the Exchange in whose name the contracts were executed. Under the rules of all of the Exchanges on which the contracts of purchase

and sale were executed, the agreements were required to be made in the names of clearing members who were held responsible for their performance. None of the contracts of purchase and/or sale under the rules of these Exchanges could have been entered into in the names of defendants. In each of such transactions however the defendants were the undisclosed principal of plaintiff acting for them.

16. If defendants had no intention of accepting or making delivery of the grain called for by the contracts in question plaintiff had no knowledge of such fact and did not participate in the intention.

17. There was no evidence that the other party to the contracts entered into between plaintiff acting for defendants and such other party, either intended not to take or make delivery, or intended to perform the contract by a mere settlement of the difference between contract and market prices on the date fixed for delivery; or that such other parties to the transactions of purchase and sale intended mere fictitious or pretended transactions.

Each of which requests for findings the Court refused to give, to which action of the Court in the refusing of each of said requested findings of fact, the plaintiff separately and severally at the time excepted.

[fol. 187] FINDINGS OF FACT

And now the Court, of its own motion, makes the following findings of fact in each of the above styled cases:

1. In all of the transactions involved in these suits the plaintiff purported to act as broker for defendants in the purchase and sale of grain for future delivery, and in no case did plaintiff pretend to enter into any other than a brokerage contract with any defendant.

2. Every pretended purchase and pretended sale was executed by plaintiff for defendant on the Grain Exchange in Chicago, Illinois, Minneapolis, Minnesota, or Winnipeg, Manitoba. None of the contracts of purchase or sale involved in these suits purported to have been executed in Missouri.

3. Every transaction was a pretended contract of purchase or sale of grain for future delivery, purported to have been executed on grain exchanges by plaintiff in behalf of defendants on the one side, in which the plaintiff was a clearing member of the exchange where executed and in which the purported other party to the transaction, either acting for himself or a pretended undisclosed principal, was also a clearing member.

4. Every pretended contract of purchase or sale executed by plaintiff for defendants was purported to have been carried out in conformity and in compliance with the rules of the particular grain exchange on which it was pretended to have been closed.

5. Every contract purported to have been executed by plaintiff on behalf of defendants pretended to call for the purchase or sale of grain for future delivery and was evidenced by a memorandum in writing under which, and under the customs and rules of the exchanges were executed, the parties were obligated in form and pretense to take or make delivery, or to respond in damages for failure to do so. That under the custom and practice existing and under the rules of the exchanges, off-setting or ringing purchases or sales under proper circumstances, in good faith, were permitted in lieu of the actual delivery of grain contracted for.

6. Every transaction involved in these suits initiated by a purported purchase or sale, was offset by a pretended sale or pretended purchase executed in the same manner as the initiating purported purchase or sale. Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders [fol. 188] and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions.

7. At all the times in question plaintiff was a member in good standing of the grain exchanges on which the pretended contracts of purchase and sale were executed, and plaintiff constantly maintained a margin with the Clearing

House of each Grain Exchange as security for the performance of its bona fide contracts. All transactions of pretended purchase and pretended sale executed by plaintiff for denfendants were purported to have been contracted for on the Exchanges in the name of plaintiff.

8. None of the pretended purchases or sales were purported to have been executed at Carrollton, Missouri. Orders were pretended to have been given by defendants from time to time at Carrollton to plaintiff's local office for purported execution on the Grain Exchanges at Chicago, Minneapolis and Winnipeg; but none of these orders were purported to have been accepted by plaintiff at Carrollton. All of them were telegraphed to Kansas City for acceptance or rejection, and if accepted, were purported to have been carried out by plaintiff by telegraphic instructions emanating from Kansas City and by pretended written confirmation of the execution of the order, which pretended written confirmations would be mailed from Kansas City to the customer.

9. That no records of the accounts of plaintiff with the defendants were kept at Carrolton; that no moneys were paid out to customers in Carrollton, but remittances were mailed direct by check from Kansas City. All statements, all pretended "P & S's," all pretended confirmations of the purported execution of purchases and sales, were mailed to defendants from Kansas City. The Carrollton office merely pretended to receive and transmit purported orders of its customers to Kansas City for pretended execution on the Grain Exchange designated in the customer's pretended order.

10. All of the transactions of purchase and sale executed by plaintiff for defendants were ficticious transactions. None of them were actually executed between clearing members of the Exchange where pretended to have been consummated.

11. In all of the transactions plaintiff bet with its customers and took the other side of the deal.

12. In each transaction, after a pretended order to sell or purchase was purported to have executed by plaintiff in be-

[fol. 189] half of defendant, written confirmation thereof was immediately mailed by plaintiff to defendant. Every written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

To which action of the Court in making each of the findings of fact so found, plaintiff (and also defendants) as to each separate finding and in each separate case, excepted at the time and still except.

Approval of Bill of Exceptions by Counsel

We have examined the foregoing bill of exceptions and find it correct, and it may be allowed and signed by the Court at any time.

Lathrop, Crane, Reynolds, Sawyer and Mersereau,
S. J. & G. C. Jones, Attorneys for Defendants.
Ryland, Stinson, Mag & Thomson, Attorneys for Plaintiff.

In United States District Court

Approval of Bill of Exceptions by District Judge

The above and foregoing bill of exceptions contains all of the evidence introduced at the trial of said cause, all of the rulings of the court, all of the exceptions allowed, all of the instructions refused, and each and every matter therein contained is true and correct, and the same is hereby signed, sealed, certified to and allowed as a full, true and complete bill of exceptions in and for said cause; and it is ordered to be filed as a record therein, and it is hereby made a part of the records in said cause.

This 6th day of November, 1930.

Albert L. Reeves, United States District Judge Who Presided at the Trial of said Cause.

[File endorsement omitted.]

[fol. 190] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed Dec. 29, 1930

To the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri:

Please prepare a transcript of record in the above entitled causes, and on or before the 5th day of February, 1931, transmit the same to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed in the above entitled causes, and to include in such transcript of record the following documents and papers, to-wit:

1. Plaintiff's petition in Cause No. 6044.
2. Defendant's Answer and Demurrer in Cause No. 6044.
3. Stipulation for Continuance in Cause No. 6044, filed November 25, 1925.
4. Stipulation for Continuance in Cause No. 6044, filed April 29, 1926.
5. Defendant's First Amended Answer to Cause No. 6044.
6. Reply of plaintiff to Defendant's First Amended Answer in Cause No. 6044.
7. Stipulation waiving trial by jury and consenting that Causes Nos. 6044, 6045, 6062, 6200, and 6201, be consolidated, filed March 27, 1928.
8. Order for Consolidation of Causes, filed March 27, 1928.
9. Plaintiff's Requested Findings of Fact.
10. Defendant's Requested Findings of Fact.
11. Order and Judgment including findings of fact and declarations of law made by the Court.
12. Memorandum Opinion of the Court.
13. Motion for new trial.
14. Order overruling motion for new trial.
15. Applications for appeal and order allowing appeal.
16. Assignments of Errors.
17. Order fixing amount of appeal bond.
18. Bond on Appeal.
19. Citation on Appeal with acknowledgment of service.

[fol. 191] 20. Order enlarging time to file Bill of Exceptions, filed April 25, 1930.

21. Order enlarging time to file Bill of Exceptions, filed November 1, 1930.

22. Bill of Exceptions.

23. All orders extending time to file transcript of record.

24. Praecipe for Transcript, filed the 29th day of December, 1930.

25. Election as to printing.

26. All record entries.

It is stipulated and agreed by and between the parties to the above consolidated causes that the pleadings set out in full in Cause No. 6044 are typical of the pleadings in Causes No. 6045, 6062, 6200, 6201, and that said parties stipulate and agree that the determination of all of said latter causes shall be governed by and shall be the same as the determination of said Cause No. 6044, and that for any and all purposes in connection with this appeal and the record on this appeal, all of the pleadings relative to said Causes Nos. 6045, 6062, 6200, and 6201, shall be considered a part of this record as though set out fully in this record. Parties hereto further stipulate and agree that the records, documents, papers, and proceedings therein set forth are sufficient for a complete record in this cause on appeal, and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said Praecipe shall be obeyed by and acted upon by the Clerk as fully and to all intents and purposes in the same manner as if said Praecipe had been regularly filed and a true copy thereof served upon each party hereto.

Ryland, Stinson, Mag & Thomson, Attorneys for Plaintiff. Lathrop, Crane, Reynolds, Sawyer & Mersereau, S. J. Jones, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 192] In United States District Court

Order—Filed Jan. 6, 1931, further extending time to file transcript

For good cause shown, it is hereby ordered that the time for filing the transcript of the record upon appeal in the

above entitled causes in the United States Circuit Court of Appeals for the Eighth Circuit be extended to on or before the 7th day of February, 1931.

Dated this 6th day of January, 1931, at Kansas City, Missouri.

Albert L. Reeves, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION OF THE COURT—Filed Jan. 28, 1929

The above cases were consolidated and tried to the court without the intervention of a jury.

Plaintiff has sued each of the defendants on certain accounts and obligations arising from transactions in grain futures. This involved the purchase and sale of grain for future delivery. Plaintiff claims that it was engaged in the brokerage business and that at all times it acted as the agent and representative of the defendants.

The defendants each admit the transactions and the accuracy of the accounts and other ostensible obligations, but they seek to relieve themselves of liability by asserting that all of said transactions were wagering contracts and that by reason thereof plaintiff is not entitled to recover.

The evidence tended to show that the plaintiff was a grain dealer in Chicago, and that among other things it was engaged in the grain brokerage business; that it was a member of the Boards of Trade or "contract markets" of Kansas City, Chicago, Minneapolis and Winnipeg; that in the year 1924 it established a branch office or place of business at Carrollton, Missouri, and that it had a private telegraph wire connecting the office at Carrollton with its office in Kansas City.

The defendants are citizens and residents of Carrollton and vicinity and were at the date of said transactions engaged in various and sundry occupations. Such occupations were in no way connected with producing, purchasing, selling or delivering grain.

[fol. 193] Plaintiff's branch office at Carrollton was established and equipped after the fashion of offices usually char-

acterized as bucket shops. It used a blackboard and thereon quoted grain prices prevailing in the "contract markets" of which the plaintiff was a member. The agent in charge of said branch office solicited business of the defendants. Its method of operation was to receive verbal orders for the purchase or sale of grain for future delivery on one of the markets of which it was a member. Such purchase or sale in every case involved future delivery. When a verbal order was given, plaintiff's branch manager transmitted such order to its office in Kansas City over the private wire. At that office the order was confirmed or rejected. The plaintiff, as agent for the defendant, then undertook to make the purchase or consummate the sale at one of the contract markets. Plaintiff's compensation was derived from commissions on the transactions. Upon the confirmation of an order, the defendant in each instance was furnished with a written instrument wherein there was a recital that "all transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor."

Defendants testified, contrary to the above, that receipt or delivery was never contemplated but that it was understood and agreed between each of the defendants and branch manager, in each transaction, that receipt and delivery would not be required. Moreover, the evidence tended to show that each of the defendants was engaged at the time in such business as to negative or disprove his capacity either to receive the property contracted for or make delivery thereof. Preparation was not made in any case for either one of the alternatives. Other pertinent facts will be stated and discussed in this memorandum opinion.

1. Plaintiff invokes the aid of provisions of the Grain Futures Act. This is a Congressional enactment approved September 21, 1922. By this law Congress undertook to provide for the regulation of all dealings in "futures." The Congress defined it as "transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures.'" It was declared that such transactions were affected with a national public interest and that they became "susceptible to speculation, manipulation, and control, and sudden or unreason-

able fluctuations in the prices thereof * * * and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products [fol. 194] and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein." (Title 7 Section 5 United States Code Annotated.)

By Section 6 Title 7 United States Code Annotated the Congress forbade such dealing except under certain specified circumstances and conditions, namely,

"Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market," * * * by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery."

By Section 7 of said Title 7 United States Code Annotated, the Congress fixed the qualifications of a "contract market." Among other qualifications required as a condition precedent to the establishment of such market or designation of such market was the following:

"When such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated."

All the provisions of the Grain Futures Act were designed to be regulatory. For the purposes of such regulation each "contract market," designated by the Agricultural Department of the Government, was required to keep full and complete records of each and all transactions whether cash purchases or sales, or contracts for the purchase and sale on future delivery. The obvious design of

this regulatory act was to suppress and prevent manipulation, wagering and gambling.

Whether plaintiff kept the records contemplated by said law is unimportant in the consideration of this case. The fact that such records were required to be kept signified the purpose of the Congress to insure good faith in all such transactions and at least sincere initial purposes to carry out the contracts thus entered into. The Congressional Act [fol. 195] contemplated good faith and sincerity of purpose in all such dealings. It did not validate or approve fraudulent contracts or those entered into in bad faith. The mere fact that there was an outward and ostensible compliance with the provisions of the law did not foreclose an inquiry as to the good faith of the transaction. The Congress merely required a demonstration of good faith. By making such demonstration the parties did not become immune from liability on account of bad faith in actual practice. It may be assumed, therefore, that the plaintiff as a member of the "contract market" at the points designated met all the requirements prescribed by law and the Secretary of Agriculture, yet this would have nothing to do with the invalidity of the transactions with the defendants, if there were the absence of good faith.

2. The Grain Futures Act neither legalized nor provided for the regulation of wagering or gambling contracts in grain futures. Penalties were annexed only for the failure to observe the requirements of the law, or in case of false report in respect of crops or markets. The question of penalties for gambling or wagering was properly left to the states. The Grain Futures Act does not in any way affect the Missouri Statutes covering the subject of bucket-shops, option dealing etc. These statutes forbid pretended dealings and one of them declares that—

"All purchases and sales or pretended purchases and sales, or contracts and agreements for the purchase and sale of the shares of stocks, or bonds of any corporation, or petroleum, provisions, cotton, grain or agricultural products whatever, either on margin or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, and all the buying or selling or pretended buying or selling of such property on margins or on optional delivery, when the party

selling the same, or offering to sell the same, does not intend to have the full amount of the property on hand or under his control to deliver upon such sale, or when the party buying any of such property or offering to buy the same does not intend actually to receive the full amount of the same if purchased, are hereby declared to be gambling and unlawful, and the same are hereby prohibited."

It will be observed from the foregoing and from the provisions of the Grain Futures Act, that both the national and state governments have sought to accomplish the same purpose. The one has attempted to suppress wagering in [fol. 196] futures because of its evil influence upon trade, the other has forbidden it under penalty because of its evil influence upon morals. These statutes are not in conflict, but are complementary.

3. The final inquiry is to determine whether the transactions which caused the obligations sued on were within the inhibitions or interdictions of the law. The evidence of the defendants is that receipt or delivery of grain was never contemplated. Moreover, it is claimed by them that they so advised plaintiff's branch office manager and that he agreed that receipt or delivery would not be required. He said he would get them "out of it." It was acknowledged that the written memorandum of the transactions contained a recital to the effect that receipt and delivery were contemplated. All the facts and circumstances, however, negative and disprove any such assertion. The defendants were not engaged in a kindred business nor were they so situated as to have received or delivered the grain mentioned in the contracts. The evidence shows that the defendants were wholly unfamiliar with such transactions and that they knew nothing of "spreads," "offsetting," or "ringing" deals, or other terminology of the markets. It was conclusive that they were dealing merely in margins. The defendants and the plaintiff so understood. Their wagering contracts, however, were cloaked with the forms of law.

The decision in the case of State vs. Christopher, S. W. (2d) 621 is directly in point. The facts in that case were practically identical with the facts in the instant case. It was there adjudged that transactions, as here carried on, were within the condemnation of the criminal statutes of Missouri.

Plaintiff calls attention to the case of Gettys vs. Newburger, 272 Fed. 209, sustaining the integrity of the transactions under inquiry. The late Judge Sanborn in that case epitomized the aggregate holdings of our court in respect of similar transactions in the following language:

"A careful reading, comparison, and study of the pertinent opinions of the Supreme Court leads to the conclusions that: It is only when under the guise of a legal contract for the purchase or sale of goods to be delivered at a future time such as those here in evidence, parties to it really intend when the contract is made, that its obligations shall be discharged by the payment by one party to the other of the difference between the contract price and the market price [fol. 197] of the goods at the date fixed in the contract for performing it that the transaction becomes a wager and unlawful, and that it is only when a broker employed to make the contract participates in or is aware of such an intention of both parties thereto that his account for advances or commissions becomes unenforceable."

The above pronouncements are supported by a great array of authorities. In fact there is not a contrary line of cases. The evidence in the instant case shows that the plaintiff falls under the ban of the principle there announced. Even though plaintiff may have carefully clothed each of said transactions with the appearance of legality, yet as said in State vs. Christopher, supra, "contracts are construed as they are understood and acted upon by the parties." The court is of the opinion that the transactions in question were wagering and gambling. This is the only conclusion deducible from the evidence. In view of this deduction, the court must find the issues for the defendants in each case and deny recovery to plaintiff in each case.

Kansas City, Missouri, January 28th, 1929.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 198] Appearances of counsel omitted in printing.

[fol. 199] Minute entry of argument and submission, December 1, 1931, omitted.

[fol. 200] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT, NOVEMBER TERM, A. D. 1931

No. 9119

UHLMANN GRAIN COMPANY, Appellant,

vs.

A. P. DICKSON et al, Appellees

Appeal from the District Court of the United States for the Western District of Missouri

Mr. Alfred M. Seddon (Mr. I. P. Ryland, Mr. Arthur Mag, Mr. Roy B. Thomson, Mr. Paul R. Stinson, and Messrs. Ryland, Stinson, Mag & Thomson were with him on the brief) for appellant.

Mr. S. J. Jones (Mr. R. S. Righter, Mr. G. C. Jones, and Messrs. Lathrop, Crane, Reynolds, Sawyer & Mersereau were with him on the brief) for appellees.

Before Kenyon, Van Valkenburgh and Gardner, Circuit Judges

OPINION—Filed Feb. 18, 1932

GARDNER, Circuit Judge, delivered the opinion of the court.

Appellant, a grain broker and an Illinois corporation, brought these five actions at law against appellees to recover moneys advanced by appellant to the appellees and earned broker's commission on the purchase and sale of grain for future delivery. By stipulation of the parties, the five actions were consolidated and tried as one, trial by jury being waived. The trial of the consolidated cases

resulted in a judgment against appellant and in favor of the appellees.

[fol. 201] The parties will be referred to as they appeared in the lower court.

The petition of plaintiff in each of the cases was in conventional form, alleging that at all times therein mentioned plaintiff was engaged in the grain business, acting as a grain broker. That on the various dates referred to, the defendants employed plaintiff to purchase and sell wheat and other grains for them on certain named markets, the defendants agreeing to pay plaintiff a commission on all such purchases and sales; that pursuant to such employment plaintiff purchased and sold grain for defendants, plaintiff sometimes advancing all or part of the purchase price of such grain, for which services and advancements defendants agreed to pay plaintiff, and that during said time an account arose between plaintiff and the defendants of mutual credits and debits in the purchase and sale of grain, the account being attached and made a part of the petition in each case.

The defendants filed answer in each case, denying generally that they were indebted to plaintiff on account of the allegations in the petition, or any item thereof, and affirmatively alleging that each and all of the transactions involved were fictitious. That the buying and selling of the grain, as alleged by plaintiff, was a mere form and pretense; that the various transactions in question were gambling transactions between plaintiff and defendants, were illegal and in violation of the laws of the State of Missouri. That the defendants at the time of the transactions did not intend to accept delivery when they purchased grain, or make delivery when they sold it, and that their gains and losses were to be ascertained by the fluctuations in the market prices of the grain; that is to say, by taking the difference between the price at which it was pretended to be purchased, and the price at which it was sold, such difference to determine the amount of their gain, or the amount of their loss.

The reply of plaintiff put in issue the affirmative allegations of the answer.

The evidence discloses that plaintiff was engaged in the grain, grain elevator, and grain brokerage business, and was a member in good standing of the Grain Exchanges or

Boards of Trade of Kansas City, Missouri, Chicago, Illinois, Minneapolis, Minnesota, and Winnipeg, Canada. Its business consisted in buying and selling cash grain for [fol. 202] itself and for its customers, the operation of grain elevators, and acting as agent or broker for its customers in the purchase and sale of grain for future delivery. In the year 1924, when all the transactions here in question were had, plaintiff maintained a principal office at Chicago, Illinois, and a branch office at Kansas City, Missouri. It also maintained a local office at Carrollton, Missouri, which was in charge of one E. S. McDonough.

The transactions here involved were initiated in the local office of plaintiff at Carrollton, by the giving of an order by one of the defendants to plaintiff's agent or employee, for the purchase or sale of grain for future delivery, to be executed on the Boards of Trade or Grain Exchanges at Kansas City, Chicago, Minneapolis, or Winnipeg. Plaintiff maintained a private leased telegraph wire from its Carrollton office to its Kansas City office. Verbal orders of purchase or sale were given by defendants to plaintiff's agent at Carrollton which were by him transmitted by telegraph to plaintiff's Kansas City office for acceptance or rejection. Plaintiff's agent at Carrollton had no authority to accept or reject any order for the purchase or sale of grain for future delivery, but transmitted such order to plaintiff's Kansas City office for acceptance or rejection. If the order was accepted by plaintiff, its Kansas City office immediately telegraphed an order for execution to its Chicago office, except where the order was for the purchase or sale of Kansas City wheat. If the order was for the purchase or sale of Chicago wheat, it was executed on the trading floor of the Chicago Board of Trade; if for the purchase or sale of Minneapolis or Winnipeg wheat, it was executed on the trading floor of that respective Board of Trade or Grain Exchange. Immediately upon the execution of such an order, plaintiff made out and mailed from its Kansas City office to the customer, a written confirmation of the order and of its execution. Such written confirmation recited the date of the contract, the quantity and kind of grain bought or sold, the contract price (per bushel) of the commodity, the delivery month, and the place where the contract of purchase or sale was executed, as required by the

Federal Grain Futures Act. Such written confirmation recited that—

"All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor. We reserve the right to close these [fol. 203] transactions when deposits are running out, without giving further notice. We also reserve the privilege of clearing all transactions through Clearing Associations, if there be any, from day to day in accordance with the usage, rules or regulations of the Exchange where the trade is made, prevailing at the time. All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Chamber of Commerce or Board of Trade where the trades are made, and the rules, regulations and requirements of its Board of Directors, and all amendments that may be made thereto. This contract is made under authority of the Act of Congress known as 'The Future Trading Act.' "

Each contract of purchase or sale of grain for future delivery, here involved, was made and executed on the respective Boards of Trade or Exchange in the name of the plaintiff as a clearing member of such Board of Trade or Exchange, and was made with a grain broker who was also a clearing member of such Board of Trade or Exchange, in the name of said broker acting either for himself or for an undisclosed principal; in fact, the rules of the respective Exchanges, and also Section 4 (b) of the Federal Grain Futures Act require that all contracts for the purchase and sale of grain for future delivery shall be made by or through a clearing member of the Board of Trade or Exchange which has been designated as a "contract market." Clearing members are the parties to these transactions on the Exchange, and they look for settlements to one another. Plaintiff was a member in good standing of the Federal Department. The Chicago Board of Trade, the Minneapolis Board of Trade, and the Kansas City Board of Trade, were all officially designated as "contract markets" by the Secretary of Agriculture, in accordance with the provisions of the Federal Grain Futures Act. Every contract of purchase or sale executed by plaintiff for defendants obligated it to full performance by sale or

purchase, and such performance was protected by the margin or deposit maintained by it with the Clearing House, or Exchange, or Board on which the transaction was made.

On most of the transactions here involved, defendants put up a margin or deposit with plaintiff. Plaintiff's only remuneration or compensation was for acting as broker for defendants in these transactions. Every sale or purchase made by plaintiff for defendants had an offsetting [fol. 204] purchase or sale, so that the net result was that no grain was delivered in any of these transactions. The testimony of the defendants was that they did not intend to make delivery in any case of the grain sold, or to accept delivery of any grain purchased, but that each sale or purchase was intended to be fulfilled by an offsetting sale or purchase of grain before the expiration of the time required for delivery.

The lower court found that all the purchases or sales were offset by sales or purchases executed in the same manner as the initiating purported purchase or sale and that, "Every pretended purchase or sale was closed out by a purported offsetting transaction before the delivery time arrived and was purported to have been executed by plaintiff on the orders and at the instruction of defendants, save and except as to some of the last transactions, which were closed out by plaintiff without instruction from such defendant at a time when defendant had no cash margin to protect his transactions." The court concluded that the transactions were gambling transactions and void under Revised Statutes of Missouri, 1929, Sections 4316 to 4326 inclusive.

On this appeal it is contended: (1) That there was no substantial evidence to support the finding of the court that the transactions were fictitious or gambling transactions; (2) that the Federal Grain Futures Act superseded all state laws relating to the subject of dealings in futures on contract markets, and that the contracts in question were valid under the Federal Grain Futures Act; (3) that independently and apart from the Federal statutes, plaintiff was entitled to recover; and (4) that if the transactions as made were unlawful, it was because of the acts of plaintiff's agent at Carrollton, which were outside the scope of his authority.

There is little room for originality of thought or expression so far as the law covering this subject is concerned, because it has been well settled by controlling decisions of the Supreme Court of the United States and of this court. There was no evidence that plaintiff bet with its customers, as found by the lower court. If the defendants lost on transactions, the plaintiff did not thereby win, and if they won by the transactions, the plaintiff did not thereby lose. There was no element of wager or bet in the transactions [fol. 205] between plaintiff and defendants. The court in its tenth finding, found that none of the contracts were actually executed between clearing members of the Exchange, but the undisputed evidence shows that in every instance the plaintiff went into a contract market and bound itself to purchase or sell. These transactions were sufficiently real so that the defendants in some instances realized and accepted a profit therefrom. On some of them there was a loss, which to date plaintiff, in part at least, has suffered. The transactions were real enough so that in most instances defendants deposited with plaintiff, and plaintiff in turn deposited with the Board of Trade or Exchange concerned, a margin to secure the performance of the contracts it made. So far as plaintiff is concerned, it was bound by the contracts of purchase and sale which it entered into as the broker for the defendants, to receive or deliver the grain contracted for, and it was liable in damages for the failure so to do.

Speculation is not necessarily gambling, and, absent some constitutional or statutory provision to the contrary, a contract for the sale or purchase of a commodity to be delivered at a future day is very generally held to be valid, even though the seller has not the commodity and has no means of getting it, other than to go into the market and buy it before the day of delivery. The contracts here under consideration were presumed to be lawful, and the defendants having pleaded that they were gambling contracts, the burden of proof was upon them to prove facts which voided them. Clews v. Jamieson, 182 U. S. 461; Cleage v. Laidley, 149 Fed. 346; Browne v. Thorn, 272 Fed. 950; Hoyt v. Wickham, 25 Fed. (2d) 777.

Contracts for future delivery made with the intention of settling them by offset or by ringing off or ringing out and by the payment of differences, in accordance with the

rules and practice of Boards of Trade, are not wagering contracts. It is not necessarily gambling that the buyer in a contract of sale providing for future delivery resells before the maturity of his contract; in fact, the contract is not tainted with the element of gambling by reason of the fact that at the time of the making of the contract a purchaser intends to resell before the time appointed for delivery. Chicago Board of Trade v. Christie Grain etc. Co., 198 U. S. 236; Clews v. Jamieson, 182 U. S. 461; Browne v. Thorn, 260 U. S. 137; Board of Trade of Chicago v. Olsen, 262 U. S. 1; Gettys v. Newburger, 272 Fed. 209; Browne [fol. 206] v. Thorn, 272 Fed. 950; Mullinix v. Hubbard, 6 Fed. (2d) 109; Wilhite v. Houston, 200 Fed. 390; Hoyt v. Wickham, 25 Fed. (2d) 777; Solomon v. Newburger, 35 Fed. (2d) 328; Lyons Milling Co. v. Goffe & Carkener, 46 Fed. (2d) 241; Grain Futures Act, 7 U. S. C. A., Secs. 1 to 17.

The Grain Futures Act, approved September 21, 1922, was enacted for the stated purpose of preventing and removing obstructions and burdens from interstate commerce in grain by regulating transactions in grain future exchanges. It limited the right to deal in futures and placed the practice under certain restrictions and regulations. Section 4 of that Act (Sec. 6, Title 7, U. S. C. A.) makes it unlawful for any person to transmit through the mail or otherwise in interstate commerce, any offer to make or execute, or any confirmation of the execution of, or any quotations, or report of the price of any contract of sale of grain for future delivery on or subject to the rules of any Board of Trade in the United States, or for any person to make or execute such contract of sale—

"which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof, except—

(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party

to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land; or

(b) *Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' as hereinafter provided in this chapter, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery.*" (Italics ours.)

While the Act placed a ban upon much of the practice of dealing in futures that had theretofore existed, it is to be observed that the transactions here involved seem clearly [fol. 207] to come within exception b, and the evidence shows that the requirements of that section were all complied with. It was manifestly the intention of Congress to legitimatize and make lawful transactions, dealings, and contracts in grain futures in which the provisions of this Act were complied with. Having made it unlawful for any person to engage in such transactions unless within the exceptions specified, it seems necessarily to follow that where the transaction comes within the exceptions specified, and has met and complied with all the requirements provided in the statute, such transactions are valid.

Dealings in grain futures had been sustained by the courts before this Act of Congress was passed. The Act does not in terms at least provide that the validity of transactions in grain futures shall depend upon whether the purchaser or seller intends to take or to make actual delivery of the grain. Congress left the law in this regard as it stood at the time of the adoption of the Act. In Board of Trade of Chicago v. Christie Grain etc. Co., supra, in an opinion by Mr. Justice Holmes, it is said:

"We must suppose that then as now, a settlement would be made by the payment of differences, after the analogy of a clearing house. This naturally would take place no less that the contracts were made in good faith, for actual delivery, since the result of actual delivery would be to leave the parties just where they were before. Set-off

has all the effects of delivery. The ring settlement is simply a more complex case of the same kind. * * *

"The fact that contracts are satisfied in this way by set-off and the payment of differences detracts in no degree from the good faith of the parties, and if the parties know when they make such contracts that they are very likely to have a chance to satisfy them in that way, and intend to make use of it, that fact is perfectly consistent with a serious business purpose, and an intent that the contract shall mean what it says. * * *

"In the view which we take, the proportion of the dealings in the pit which are settled in this way throws no light on the question of the proportion of serious dealings for legitimate business purposes to those which fairly can be classed as wagers, or pretended contracts. No more does the fact that the contracts thus disposed of call for many [fol. 208] times the total receipts of grain in Chicago. The fact that they can be and are set off sufficiently explains the possibility which is no more wonderful than the enormous disproportion between the currency of the country and contracts for the payment of money, many of which in like manner are set off in clearing houses without any one dreaming that they are not paid, and for the rest of which the same money suffices in succession, the less being needed the more rapid the circulation is."

This court in Gettys v. Newburger, supra, in an opinion by the late Judge Sanborn, after defining gambling transactions, said:

"On the other hand, there are lawful customary and generally prevailing methods of closing out such contracts, settling them and discharging the obligations of the parties thereunder which do not render such contracts wagering contracts or illegal, to-wit: (1) By sales; (2) by direct set-offs; and (3) by ringing off before the times of delivery specified in the contracts arrive, so that when those times come no liability to deliver or to pay will exist, and if the parties, when they make such a contract intend not to deliver or to pay for the commodity at the time fixed in the contract therefor because they intend to close out the contract and to settle their obligations thereunder by the use of these lawful methods before the time fixed for the delivery arrives, that intention not to pay or deliver is con-

sistent with the laws and the public policy regarding wagers and it does not make or tend to prove such a contract a wagering contract, illegal or void."

In the instant case, the defendant Dickson, on direct examination, said:

"There was no intention on my part at any time to accept delivery of wheat that I bought or make delivery of wheat that I sold. I have never been in any other business but the clothing business. I was never interested in any elevator. I am not a grower of wheat. I could not have made any preparations to accept delivery. I would not have been financially able to have bought the wheat and paid for it."

On cross-examination, however, he testified as follows:

[fol. 209] "Q. Did he (Mr. McDonough, plaintiff's agent at Carrollton) tell you the deals would be handled by the Uhlmann Grain Company on those Boards of Trade?

A Yes, sir.

* * * * * * *

Q. So there were a lot of those transactions that were handled either because you told him what to do, or acquiesced in what he did for you?

A. I suppose so.

Q. Every one of those transactions he handled for you in the way you have described, was done either because you told him beforehand to close it out, or because he closed it out and later you told him it was all right?

A. Yes, sir.

* * * * * * *

Q. I am asking you if it isn't a fact that is what you did before the delivery month arrived, you sold out your purchase and you bought out your sales?

A. I suppose it was.

Q. And that is what you intended to do all along in all of these dealings that you had?

A. Sell out without delivery?

Q. Yes, sir; and buy out without a purchase before the time came around, and that is what you did whenever you exercised your own judgment, didn't you?

A. I suppose."

Another one of the defendants testified:

"Q. Now, whenever any of those contracts were entered into between you and as you say, Mr. McDonough, that you made a purchase, for instance, did you later make a sale against that purchase before delivery time came?
A. Yes, sir.
Q. Did that in every instance?
A. Always.
Q. Never did anything else?
A. No, sir.

* * * * * * *

Q. That is to say, before the time of delivery arrived you were going to get rid of your contract, that is the way you intended to do when you first started to deal with McDonough?
A. That is the instructions I gave to him.
Q. And he carried them out, didn't he?
A. Yes, sir."

This testimony, which is typical of that submitted on behalf of all the defendants, and so stipulated, shows that it was the intention and understanding of the defendants that [fol. 210] all of these transactions were to be consummated by plaintiff as their broker upon the contract markets named, and that the transactions were actually consummated by the plaintiff in accordance with their purpose, intention and understanding.

The validity of these contracts seems to be conclusively established by Gettys v. Newburger, supra. This court has consistently so held in a long line of cases following Gettys v. Newburger. In Mullinix v. Hubbard, supra, where the validity of a similar contract was upheld, this court, speaking through Judge Lewis, said:

"As already stated, there was no delivery on any of these contracts, but before delivery dates were due they were all closed out by the lawful, customary and generally prevailing methods permitted by the rules and regulations of the exchange and its clearing house, and Bryant's intention when he made his contracts that they should be closed out in that way did not render them wagering contracts."

In Lyons Milling Co. v. Goffe & Carkener, supra, in an opinion by Judge Phillips, it is said:

"The fact that contracts for future delivery are closed out before delivery is due, by set-off or ringing off in accordance with the rules and regulations of the Board of Trade and its clearing house, and the fact that a purchaser so intended to close out a contract before delivery was due, does not make the contract a wager and invalid."

The burden of proof was on the defendants to prove that the trades here involved were gambling transactions. This burden they have not sustained, and there was no substantial evidence to sustain the Court's finding which branded these contracts as gambling transactions.

It is urged, however, that the transactions were void under certain Missouri statutes. Section 4316 of the Revised 1929 Missouri Statutes makes the carrying on of a "bucket shop" a felony. Section 4317 attempts to define the term "bucket shop" and transactions within the ban of the statute. The test is whether in fact there was an actual purchase and sale, or sale and purchase, for or on account of the parties to the contract. We have here held that there was such a sale and purchase of grain for future delivery at a designated contract market in accordance with [fol. 211] the provisions of the Grain Futures Act and the rules prescribed by such markets. Neither the Missouri Statutes, nor the decision of the Supreme Court of Missouri in State v. Christopher, 2 S. W. (2d) 621, has any application to purchases of grain for future delivery made at duly designated markets. In that case the Supreme Court of Missouri said:

"We accordingly hold, until federal authority declares otherwise, that the effect of the Grain Futures Act was to restrict the operation of state laws, like our section 3574, so as to make them inapplicable to transactions coming within the terms of the Grain Futures Act, conducted on a 'contract market' according to the rules prescribed by that market."

There is both reason and authority for holding that Congress having entered the legislative field with respect to transactions in grain futures at designated contract mar-

kets has superseded and displaced all state laws and legislation regarding such dealings. Stafford v. Wallace, 258 U. S. 495; Swift & Co. v. United States, 196 U. S. 375; Board of Trade of Chicago v. Olsen, 262 U. S. 1; Chamber of Commerce of Minneapolis v. Federal Trade Commission, 13 Fed. (2d) 673; Hoyt v. Wickham, 25 Fed. (2d) 777; State ex rel Burnett v. Rosenbaum Grain Co. (Kans.), 222 Pac. 80; Goffe & Carkener v. Henneberger, 294 Pac. 672. However, it is not necessary to decide whether the Grain Futures Act supersedes the Missouri Statute, further than the Missouri Court has itself held.

The state statute could not affect transactions at a contract market. It appears in this case that plaintiff merely extended the facilities of its Kansas City office into Carrollton, by making available there much the same service and information to be had at the contract market. Any one of the defendants could have gone into either of these contract markets, through a broker, and made these purchases and sales. This in effect was done at Carrollton, using the agency employed by plaintiff at that place to effectuate the transactions.

These transactions involved interstate commerce, and if the Missouri Statute relied upon, created a burden on or interfered with interstate commerce, then it was immaterial whether that burden was substantial or incidental, because when Congress has acted with reference to a matter con- [fol. 212] fided to it by the Constitution, then its statutes displace and supersede all conflicting state legislation touching the matter. Gulf etc. R. Co. v. Hefley, 158 U. S. 98; Missouri etc. R. Co. v. Harris, 234 U. S. 412; Asbell v. Kansas, 209 U. S. 251; Lake Shore etc. R. Co. v. Ohio, 173 U. S. 285; Smith v. Turner, 7 Howard 396.

In the Grain Futures Act it is recited that—

"Transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign

countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof and to facilitate the movements thereof in interstate commerce."

The Act was sustained by the United States Supreme Court in Board of Trade of Chicago v. Olsen, supra, as a regulation of interstate commerce.

When the lower court held that the plaintiff was engaged at Carrollton in purely intrastate commerce, it failed to give effect to the declarations of the Grain Futures Act, and failed to recognize that this local agency was a part of the national and international market and agency for the handling and sale of grain or grain futures. Stafford v. Wallace, supra.

As the case must be reversed for the errors already considered, it is not deemed necessary to discuss other contentions of appellant.

The judgment appealed from is reversed and the cause remanded for further proceedings not inconsistent herewith.

IN UNITED STATES CIRCUIT COURT OF APPEALS

CONCURRING OPINION—Filed Feb. 18, 1932

VAN VALKENBURGH, Circuit Judge, concurring:

[fol. 213] In view of the importance of the question at issue, affecting, as it does, a very necessary unit in our industrial life, I desire to add my reasons for concurrence in the able main opinion in this case.

The Uhlmann Grain Company is a member in good standing of the Boards of Trade of Kansas City, Missouri, Chicago, Illinois and Minneapolis, Minnesota, and through a representative operates upon the Board of Trade or Grain Exchange of Winnipeg, Canada. In Missouri, at the time under consideration, it had a branch office in Carrollton, in charge of one McDonough. Through this office the manager communicated for final confirmation and disposition of all grain trades with the parent house or houses. It is conceded, and is so stated by the court in its findings of fact, that all the requirements of the Grain Futures Act were met in the procedure adopted in the transaction here under

consideration. The finding of the court is merely that such transactions were fictitious and the regularity of the procedure merely a sham and cover for such. With this concession it is necessary only to apply the law applicable to such situations.

To begin with, then, where contracts for the purchase and sale of grain on exchanges are fair on their face and presumptively lawful, regardless of the undisclosed intention of the defendant purchaser, the burden is on such defendant to prove that the transactions were mere wagers on the fluctuations of the market. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390; Clews v. Jamieson, 182 U. S. 461; Lyons Milling Co. v. Goffe & Carkener (C. C. A. 10), 46 Fed. (2d) 241.

In this case defendants rely upon their statement to the broker that they did not intend at any time to take any grain as purchasers nor to fulfill any orders as sellers. That this was communicated to the broker's representative, who assured defendants that they could be protected against such a situation by hedging or sales prior to the date of maturity. There is no contention that the other parties to the contract, to-wit, the dealers upon the foreign Boards of Trade, expressed any such intention or were cognizant of such expressed intention. That such was the understanding is explicitly denied by Mr. McDonough, and all the contracts and documents entered into were in approved form for legitimate dealing upon the Boards of Trade in question. Of these contracts, and their import, the defendants [fol. 214] are conclusively proved to have had knowledge. Their testimony concedes that they knew these orders were being placed for them by the broker upon the foreign Boards of Trade. These transactions were in the nature of spreads or hedging operations and consisted largely of sales upon the Winnipeg Board and corresponding purchases upon the Chicago Board of Trade or the converse. Thus in advance it was known that one trade was intended to off-set the other, and any such trade was subject to being closed out before the future date of maturity of the contract. Such an operation has been repeatedly and authoritatively held to be valid, and this is true independently of the Grain Futures Act, or whether it has entered and appropriated this field, where the operation is otherwise a legitimate and

legal one in the jurisdiction where it is consummated. Board of Trade v. Christie Grain & Stock Co., 198 U. S. 236; Clews v. Jamieson, 182 U. S. 461; Cleage v. Laidley (C. C. A. 8), 149 Fed. 346; Gettys v. Newburger, et al. (C. C. A. 8), 272 Fed. 209; Mullinix v. Hubbard (C. C. A. 8), 6 Fed. (2d) 109; Hoyt v. Wickham (C. C. A. 8), 25 Fed. (2d) 777; Lyons Milling Co. v. Goffe & Carkener (C. C. A. 10), 46 Fed. (2d) 241.

And where a defendant employs brokers to purchase and sell grain for him on commission at various exchanges, the brokers having no interest in the purchases and sales other than as defendant's brokers, their relation is not affected by the fact that in executing defendant's orders the brokers assume the position of principals toward those with whom they deal. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390. There is nothing in this evidence to indicate that the dealings were between plaintiff and defendants as such principals. On the contrary, the entire testimony shows that the transactions were between defendants and principals upon the several Boards of Trade, whose identity could have been disclosed at any time upon application. There is no testimony which indicates that there was any irregular procedure upon those grain exchanges. Defendants, having lost in their grain speculations, seeks to charge the principals upon those exchanges with their asserted knowledge of the representative of appellant in charge of the Carrollton office. The record both from the standpoint of actuality or legal presumption totally fails to establish this contention.

[fol. 215] The trial court evidently based its conclusion upon the case of State v. Christopher, 318 Mo. 225. In the first place the Missouri law is out of the picture, because it is conceded that none of the sales involved took place or were consummated upon the Kansas City Board of Trade; but it is somewhat instructive to consider further the basis of the Christopher decision. Its holding necessarily was that trades initiated through the Sedalia branch of the Kansas City Board of Trade were not conducted upon a contract market, but that such operations were confined to the Sedalia house, which was, in and of itself, not a contract market. It assumed, therefore, that the dealings were between the customer and the Sedalia house, which was thus conceived to be a bucket-shop.

The trial court applied this same situation to the branch at Carrollton. This contention obviously cannot be sustained. So long as the ultimate consummation of the transactions were upon the contract market either at Kansas City, Chicago or Minneapolis, it matters not that they were initiated for convenience in the branch houses of such markets. It is essential that such out-lying houses should be disconnected in substance and in fact from parent grain exchanges to justify the conclusion of the Missouri Supreme Court and of the court below. With this proposition established, the conclusion of both such courts falls, but it is further to be observed that the Supreme Court of Missouri was not dealing with the statute of that state which forbids dealing in grain futures except with the intention to take or deliver the grain dealt in, but with section 3574 R. S. Mo. 1919, which makes it a misdemeanor for any person to keep a place wherein is permitted pretended buying and selling of stocks, grain and other products without any intention of receiving and paying for the property bought, or delivering the property sold; and the opinion concedes that the Grain Futures Act of Congress does regulate, forbid, or make lawful any contract for the future delivery of grain where made in a contract market, designated as such by the Secretary of Agriculture. In so holding the Supreme Court of Missouri is in harmony with the weight of authority and with the purpose and intendment of the Grain Futures Act. See, State, ex rel. v. Rosenbaum Grain Company, et al., 115 Kas. 40; Lyons Milling Company v. Goffe & Carkener, (C. C. A. 10) 46 Fed. (2d) 241. See, also, the decision of the [fol. 216] same district court, from which this appeal is taken, in Board of Trade of Kansas City v. Gentry, in which the trial judge in this case sat as one of the three judges. But the effect of the Grain Futures Act is sufficiently disclosed by the decisions of the Supreme Court in construing that act.

In Stafford v. Wallace, 258 U. S. 495, 528, it is pointed out that the various stock yards of the country are great national public utilities to promote the flow of commerce from the ranges and farms of the west to the consumers in the east. They conduct a business affected by a public use of a national character and subject to national regulation.

In Board of Trade of City of Chicago v. Olsen, 262 U. S. 1, 43, this same principle is held to apply to the grain busi-

ness upon Boards of Trade. It has been held, and is universally recognized, that such Boards of Trade or contract markets are essential to transactions in grain and kindred products, not only from the standpoint of those who sell upon such boards, but from that of the quotations upon which producers depend for their information. Such was the view of Congress in establishing these grain markets and entering this field of regulation, and such is the construction placed upon this legislation by the Supreme Court of the United States.

It must inevitably happen that there will be irregularities and abuses, but so long as transactions are conducted in accordance with the rules and regulations of such contract markets, disgruntled speculators cannot be heard to complain and to repudiate their legal obligations upon such ground. It is true that if a house is established to be a mere bucket-shop, apart from and disconnected with any contract market, then the provisions of law against gambling in futures, or otherwise, apply. That Congress has entered and appropriated this field, as I have said, is evident from the decision in the Olsen case in addition to the rulings already cited. This is the necessary import of the following language in that case:

"In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation, and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce, and render regulation imperative for the protection of such commerce and the national public interest therein. * * * [fol. 217] Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the states in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided. * * * The Board of Trade conducts a busi-

ness which is affected with a public interest and is, therefore, subject to reasonable regulation in the public interest."

The mere fact that no grain was actually delivered or received pursuant to purchases and sales, but that the sales and purchases were set off against others according to the custom of exchanges, does not show that the transactions were illegal. Wilhite v. Houston (C. C. A. 8), 200 Fed. 390. All the more is this true where the very nature of the transaction was in its inception a spread or set off dealing, which has been expressly held to be lawful. It is in evidence that some of these defendants would have been able to respond to their obligations under the contract entered into, but this is not essential. Contracts in every day affairs are entered into, and pecuniary liabilities thereby established irrespective of the financial ability of a party to respond thereto; nor can it be expected that brokers and parties upon contract markets must be put to investigation of a customer's financial rating before permitting transactions upon such markets.

The situation is conclusively disposed of by Mr. Justice Holmes in his opinion in Board of Trade of Chicago v. Christie Grain & Stock Company, 198 U. S. 250, as shown in Judge Gardner's opinion.

IN UNITED STATES CIRCUIT COURT OF APPEALS

DISSENTING OPINION—Filed Feb. 18, 1932

KENYON, Circuit Judge, dissenting:

It seems to me that the purported sales and purchases which appellant claims were carried on for the various ap- [fol. 218] pellees were nothing but fictitious operations and were gambling transactions. The fact that they may be termed "dealings in grain futures" sanctioned by the Federal Grain Futures Act does not remove the odor of bucket shop transactions surrounding them. Carrollton was a small town in Missouri at which plaintiff through an agent operated an office. This office was in the basement of the Florence Hotel. It consisted of a roll top desk, some chairs where the prospective victims might rest, a blackboard where they might study figures which they could not understand, a desk for telegraph instruments, a

typewriter, and some other paraphernalia that added a touch of mystery to the situation. There was a private telegraph wire communicating with the Kansas City office of appellant. Here sat throughout the day some of the citizens of Carrollton and vicinity who expected to grow rich rapidly by gambling in the purchase and sale of imaginary commodities. The testimony shows that the defendants dealt in over three million bushels of grain during the short time that plaintiff had its office at Carrollton. The evidence shows there were some forty odd other customers. If they had been equally as desirous of buying grain and selling the same as were the defendants there would have been more bushels of grain purchased and sold than possibly could have been produced in the county in which Carrollton was located and adjacent counties thereto, and if it had been delivered, these customers, consisting of an ice dealer, an employe in a printing office, some farmers, an insurance agent, a country merchant, a laundryman's wife, and an undertaker's employe, would have sought in vain for some place in which to store the products. Of course what they were doing was merely betting on the advance or fall in the price of grain with no intention of actually purchasing or selling any grain. I am so well satisfied that the trial Court was right in holding these transactions to be pure gambling transactions that I am unwilling to agree that they were legal. Therefore feel compelled to dissent from the majority opinion.

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[fol. 219] In United States Circuit Court of Appeals, Eighth Circuit

No. 9119

Uhlmann Grain Company, a Corporation, Appellant,

vs.

A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson, and Ernest Miller

Judgment—February 19, 1932

Appeal from the District Court of the United States for the Western District of Missouri

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that the Uhlmann Grain Company, a Corporation, have and recover against A. P. Dickson, Joe Dickson, I. N. Calvert, C. T. Dickinson, and Ernest Miller the sum of — Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions for further proceedings not inconsistent with the opinion of this Court.

[fol. 220] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPELLEES' PETITION FOR REHEARING—Filed March 17, 1932

Now come appellees in the above entitled cause and pray the Court to set aside the opinion and decree of this Court filed and entered herein February 18th, 1932, and to grant appellees a rehearing of this cause for the following reasons to-wit:

I

The Court overlooked material matters in evidence which sustained and justified the trial court's findings of fact Nos. 10 and 11 (Record 18, 188) which findings of fact were as follows:

"10. All of the transactions of purchases and sales executed by plaintiff and defendant were fictitious transactions; none of them were actually executed by clearing members of the exchange where pretended to have been consummated."

"11. In all of the transactions plaintiff bet with its customers and took the other side of the deal."

[fol. 221] The Court in its opinion seems to accept as conclusive the testimony of plaintiffs that the transactions

were in fact real, were actually executed and binding, but overlooked in that connection material evidence delivered by plaintiff's officers and employees as well as on the part of defendants which fully justified the Court's finding in favor of the defendants, namely, testimony of plaintiff's vice president, Paul Uhlmann, to the effect that the whole matter (transactions in question) were in plaintiff's hands (Record 147); and letters addressed by plaintiff to Mr. R. A. Thompson and I. N. Calvert (Record 153) which justify the trial court's finding that these were fictitious and gambling transactions; and the testimony of plaintiff's witness, Mr. E. S. McDonough, that the Carrollton office was opened up for the mere purpose of soliciting customers to engage in transactions on the Board of Trade; and also overlooked evidence of the nature of the business in which these Carrollton customers were engaged, their avocations and financial condition to carry on such enormous transactions (Record 166, 167).

II

The Court in its opinion overlooked and failed to give effect to the testimony of witnesses, both for plaintiff and defendant, to the fact that these were purely marginal transactions; that no delivery was intended in any event, and that the transactions were to be closed and were closed by taking the differences at which the grain was purported to have been bought and the price at which it was purported to have been sold, which evidence goes to establish the fact that these were gambling transactions and which fully justified the findings of fact Nos. 10 and 11, as made by the trial court.

III

The Court in the majority opinion overlooked the well-established rule of law that where no delivery was intended by either party and the contract was to be closed by an ascertainment of the differences between the market price of the grain at the time of its purchase and at the time it was sold, in and of itself constitutes a gambling contract and is therefore void.

IV

The Court in its opinion overlooked the rule of law that where one party to a transaction or transactions knows of,

or is in possession of such facts as to bring home to him [fol. 222] knowledge that the other party is gambling or wagering on the rise and fall of the markets, and either directly or indirectly as principal or agent participates therein, then the contract is void; and any consideration moving from one party to the other is unlawful, illegal, and such contract can not be enforced or recovery had thereon.

V

The Court in the majority opinion gave the "Grain Futures Act" a broader scope than Congress intended. Congress did not intend by the adoption of the "Grain Futures Act" to invade the whole domain of legislation on the subject or by that act to repeal state laws denouncing grain gambling, marginal trading or the operation of bucket shops.

Respectfully submitted.

S. J. Jones, G. C. Jones, Richard S. Righter, Attorneys for Appellees. Lathrop, Crane, Reynolds, Sawyer & Mersereau, of Counsel.

We certify that the foregoing petition for rehearing is not interposed for delay, but that in our opinion it is well-founded in point of law.

S. J. Jones, G. C. Jones, Richard S. Righter, Attorneys for Appellees.

[File endorsement omitted.]

[fol. 223] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—March 21, 1932

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellees.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF APPELLEES TO STAY MANDATE—Filed March 28, 1932

Comes now appellees in the above entitled cause and show to the Court that they are preparing to file in the Supreme Court of the United States a petition for a Writ of Certiorari herein, and pray the Court pending the filing of said petition to stay the mandate herein.

Richard S. Righter, S. J. Jones, G. C. Jones, Attorneys for Appellees.

[File endorsement omitted.]

[fol. 224] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—April 1, 1932

On Consideration of the motion of appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 225] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 226] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,744. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 63. A. P. Dickson, Joe Dickson, I. N. Calvert, et al., petitioners, vs. Uhlmann Grain Company. Petition for a writ of certiorari and exhibit thereto. Filed May 9, 1932. File No. 36,744.